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CAMPAIGN FINANCING OF NATIONAL ELECTIONS IN FOREIGN COUNTRIES

Prepared by the Staff of the Law Library

Ruth Levush, Coordinator

Law Library of Congress
April 1991
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Abstract: Campaign Financing of National Elections in Foreign Countries surveys the laws regulating campaign financing in 19 countries, including direct and indirect funding by both governments and private contributors and covers restrictions on contributions, limits on campaign expenditures, regulation of broadcast advertising, and methods of enforcing requirements concerning accountability reporting for money spent.

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CAMPAIGN FINANCING OF NATIONAL ELECTIONS IN FOREIGN COUNTRIES

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CAMPAIGN FINANCING OF NATIONAL ELECTIONS IN FOREIGN COUNTRIES

A COMPARATIVE STUDY

I. Introduction

The availability of financial resources to political parties may have a tremendous impact on the electoral process in democratic regimes; so powerful in fact, that in some cases, it may influence what we consider as the democratic nature of the election itself.

If a ruling party holds a considerable bureaucratic advantage over the opposition parties and benefits from superior access to material resources and funds, there is no doubt that the principle of equal political opportunity is compromised.[1] Similarly, if political success is achieved primarily through monetary advantage, the principle may also be threatened. Money from political donations can influence and even control the flow of information, which could be detrimental to well informed voting. Herbert E. Alexander, in his article "Money and Politics: Rethinking a Conceptual Framework"[2] states that: "The distinguishing characteristics of money are that it is transferable and convertible without necessarily revealing its original source. The convertibility of money is of particular advantage in politics...." Due to this and similar concerns, a number of countries have instituted a system of government funding of electoral campaigns. The justification for such funding may be that it should lead to more competition since it will enable candidates or parties that lack monetary resources to more equally compete in a national election. Equality of electoral opportunity can only be achieved if the mechanism used for such governmental funding includes some safeguards against misuse of power by the governing party or person.

The dangers inherent in public funding include the possibility of "institutionalization of existing party systems, generally favoring central party organizations over local ones, freezing relationships among major parties or dominant coalitions, or locking out new or emerging movements while maintaining current parties in existence perhaps after their support has diminished."[3] Whether the governmental funding takes a direct or an indirect form (such as free broadcasting time, tax incentives for political contributions, or other means), there should be safeguards to insure the equitable distribution of such funds.

In dealing with the issues involved with government funding legislation in the surveyed countries, the following questions have been raised:

- Should new parties or candidates get financing?

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[1] *See* country reports for Bulgaria and the Soviet Union.

[2] *Comparative Political Finance in the 1980s*, 9 (1989) .

[3] K. Paltiel, " Public Financing Abroad, Contrasts and Effects", in Malbin M. *Parties, Interest Groups and Campaign Finance Laws* 364-370 (1980).

- Should the taxpayer have to finance the campaigns of losing parties or candidates, or do the losers themselves have to be responsible for the risk they took?

- Should the taxpayer have to finance the campaign of a party he does not support?

- What kind of accountability should be required of the recipients?

- Should there be mandatory auditing of these funds or do disclosure or certain bookkeeping requirements and the general penal law of the country suffice to maintain a clean financial campaign?

- Should there be a limitation on campaign expenditures?[4]

Each country has taken different approaches to these aspects of governmental funding.

All of the countries surveyed allow non-governmental funding, although some imposed ceilings on the amount of contributions or expenditures permitted from such sources. Some countries, fearing foreign intervention in their internal affairs, either prohibited or limited foreign contributions.

The comparative analysis that follows is intended to explore the methods of regulating campaign financing which are used in selected countries in the world, the ways they are carried out and the attitudes of different legislatures toward appropriate penalties for their violation. The countries included are: Australia, Canada, Germany, Great Britain, Greece, India, Israel, Italy, Japan, Malaysia, Mexico, the Netherlands, Sweden, Taiwan, Thailand, and Turkey. Reports on campaign financing in past or present communist countries undergoing electoral reforms (Bulgaria, Poland, and the Soviet Union) as well as a report on financing elections for the European Community Parliament are appended. Although not included in the comparative analysis, it was felt that the great interest generated by the new electoral reforms and the anticipation for 1992 *new European order* warranted their inclusion.

II. Government Funding

A. Direct Funding

Only about half of the countries surveyed award direct funding to parties or to candidates competing in the election. These countries are: Australia, Canada, Germany, Greece, Israel, Italy, Mexico, Sweden, Taiwan, and Turkey.[5]

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[4] In the United States, limitations on contributions have been upheld by the Supreme Court, but amounts expended by candidates and parties may not be limited without violating the first amendment rights of the Constitution [Buckley v. Valeo, 424 U.S. 1 (1976)].

[5] *See* Table No. 1 for details.

The laws of the countries that provide such direct funding usually require a minimum share of votes as a condition for the receipt of the funds. This minimum share, subject to other conditions, varies as follows: 0.5 percent of the total vote in Germany, less than 1 percent in Israel, 1.5 percent in Mexico, 2 percent in Italy, 2.5 to 4 percent in Sweden, 4 percent in Australia, 3 to 6 percent in Greece, 7 percent in Turkey, 15 percent in Canada and 75 percent of the needed votes for election in Taiwan.

There are two basic systems for the distribution of direct governmental funds. The first one, adopted by Canada and Australia, bases the funding on itemized accounts of qualified expenditures. The second system, found in other countries which provide direct funding, bases the funding on a flat-rate formula, usually taking into consideration the percentage of valid votes received in the election. However, the latter formula is not applied in certain cases. In Germany, for instance, the amount of governmental funding is limited to the total income of the party from other sources over a four-year period starting from the second calendar year following the granting of compensation. The German rule, enacted in 1984, is based on the philosophy that the parties should not be preponderantly funded by the government.[6]

B. Indirect Funding

Some form of indirect funding exists in all the countries surveyed. Japan, which does not allow direct funding, subsidizes more campaign-related activities than any other country in the survey. Among such activities are: transportation during the election campaign, free mailing, making of posters and establishment of official sign boards for displaying them, placement of newspaper advertisements, free broadcasting, arrangement of public meeting places where candidates can give speeches, publication of election bulletins that contain data on the candidates, and tax benefits for political contributions.

1. Broadcasting

Most countries, even those limiting government involvement in campaign financing, subsidize the **broadcasting** of political advertisements.[7] The free broadcasting policy seems to take into consideration that broadcasting is the most expensive component in political campaigns throughout the world. Even in the United States, where the law does not prescribe free broadcasting, it does require stations to charge political candidates the lowest advertising rate charged for their best commercial clients.[8] In countries where broadcasting time is free, the greatest problem has been the allocation of time. Granting equal amounts of time to each party might encourage the formation of splinter groups; on the other hand, the system where time is given in proportion to

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[6] For specific information with regard to government direct funding, *see* table No. 2 following this analysis.

[7] *See* Table No. 3 for details.

[8] 47 U.S.C. § 315(b)&(c) 9 (1988).

the number of seats won or votes received at the previous general election favors the status quo.[9] A certain compromise was reached in Israel where each party, including those which were not represented in the previous parliament, is given ten minutes and each party already represented in the outgoing parliament receives three additional minutes for each member in the parliament.

A special problem arises in mixed public and private broadcasting systems, such as Canada's. There the problem is resolved by allocating a fixed amount of prime time (six and a half hours) on all networks and stations for all parties for a four-week period prior to the polling day. This total is then divided among the registered parties by their agreement; and, if such an agreement cannot be reached, the time allotments are allocated by the government-appointed Broadcasting Arbitrator.[10]

2. Other Indirect Subsidies

Only Australia, Israel, and Japan indirectly finance the **transportation** of voters or candidates during the election period. Only Great Britain, Japan and Mexico indirectly finance the **postal charges** of election publications. Japanese law further grants the right to a limited number of **free newspaper advertisements** during the election period. Swedish law, on the other hand, permanently subsidizes newspapers. This is done because the major Swedish daily newspapers are each affiliated with a political party, and the subsidies to the newspapers are intended to promote the supply of information which is so vital to a democracy.

3. Tax Benefits for Contributions

Another method of indirect governmental financing adopted by several countries is through special **tax benefits** to private contributors or to parties or candidates. By forfeiting the tax which is due to the state, the government indirectly funds the parties or the candidates. The amount of indirect funding equals the amount which would have been paid had no exemptions or credits applied. Countries providing such tax benefits are: Canada, Germany, Japan, Mexico, the Netherlands, Taiwan, Thailand, Turkey, and Great Britain (only on inheritance). In most of these countries there is a ceiling on the amount that can be deducted; in the Netherlands private donations are tax-deductible provided they comprise at least one percent but do not exceed ten percent of a person's gross annual income. In the case of corporations, donations are tax deductible only if they exceed 500 guilders but comprise not more than six percent of the total profit. Germany's law limits the deductibility of both individual and corporate contributions to 60,000 DM (40,000 U.S. dollars equivalent). In Japan, political contributions made by an individual should exceed 10,000 yen (76 U.S. dollars equivalent) in one year in order to be deducted from the person's total income for the taxable year. Canada awards benefits in the way of tax credits

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[9] Paltiel, *supra* note 3, at 361.

[10] Broadcasting of politically related news may pose some delicate questions. In some cases, freedom of information may be misused by way of creating the news events themselves for additional publicity. A determination in these cases is a task for the courts, *see* country report on Israel. For further information on paid and free political broadcasts in various countries, *see* Table No. 3.

rather than deductions. While Canadian taxpayers are not allowed to deduct political contributions in calculating their taxable income for a year, they are given tax credits of up to $500 per year for donations to registered political parties or official candidates in a federal election. Since these credits are directly deducted from the amount of income tax that the taxpayer would otherwise have to pay, they are much more generous than a tax deduction.[11] While the above-mentioned countries regard tax benefits as an incentive for the donor's participation, and thus an encouragement for political involvement, some concerns were expressed in other countries like Australia and Greece that such benefits would favor only wealthy donors.

III. Non Governmental Funding

A. Restrictions on Types of Contributors

Few countries included in this survey prohibit private persons from contributing money to a political campaign. In some countries, such as Germany, the parties are the recipients of the funds, and it is not customary to donate to individual candidates. Japan and Taiwan, however, impose restrictions on the candidates themselves; Japanese law bans candidates from contributing to their own electoral district, while Taiwanese law, on the other hand, bans candidates from accepting contributions from other candidates.

The rules on corporate donations vary from a total prohibition on such donations in Israel to a limited prohibition on donations made only by certain corporations in other countries. Among the typical prohibitions are those applying only to the public sector, including government companies in Greece, India and Turkey, and those applying to corporations operating at a loss in Japan and Taiwan. Japanese law further prohibits donations made by a corporation to a candidate who serves as its director or holds any other influential position in the corporation. German and Turkish laws prohibit contributions by political foundations, charitable organizations, trade associations and anonymous donors.

Another common restriction is the prohibition on **foreign contributions**. Wealthy nations often exert influence in smaller or poorer nations by using economic leverage, which may include subsidies to parties, politicians and publications.[12] Article 2(4) of the United Nations Charter enjoins states to "refrain in their international relations from the threat or use of force against the ... political independence" of other states. Non-forcible actions, such as foreign contributions to national political campaigns, are not directly regulated by Article 2(4), but would be restricted by general principles of international law. These principles gave rise to a view that a state violates the nonintervention norm only when its non-forcible political activities prevent the people of another state from exercising the political rights and freedoms that form part of the evolving body of international human rights law.[13]

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[11] For further information on indirect funding, *see* Table No. 4.

[12] L. Damrosch, "Politics Across Borders: Nonintervention and Nonforcible Influence Over Domestic Affairs," 83 *The American Journal of International Law* 2 (1989).

[13] *Id.* at 6.

Whether these international law rules apply or not, the fact is that many countries do not trust others to abide by them and prohibit or restrict contributions made by foreign countries, individuals or corporate bodies. While United States law generally prohibits contributions from any foreign nationals, including corporations, some loopholes remain.[14] Prohibitions on foreign contributions can be found in the laws of Chile, France, Germany, India, Japan, Malaysia, Mexico, the Philippines, Taiwan, Thailand, and Turkey. Israeli law prohibits only donations by corporations, whether incorporated in Israel or abroad, but does not restrict contributions by individuals, even if they are not of Israeli nationality. German law allows foreign contributions, if they flow from the assets of German citizens or from an enterprise over fifty percent German-owned.

B. Restrictions on Contributions

Aside from restrictions on the types of donors, several countries impose certain limitations on the contributions themselves or on the amounts of expenditures candidates or parties may incur. The most common **restrictions applied to contributions** are monetary ceilings and disclosure requirements.

Monetary ceilings exist in India, Israel, Japan, Turkey and Taiwan. Indian law limits contributions by a company to no more than five percent of its average net profits during the three immediately preceding financial years. Israeli law limits individual gifts to 20,000 New Shekels (about US$10,000) or double this amount in an election year. Japanese law prescribes different ceilings depending on the amount of the corporation's capital. Furthermore, annual contributions made by individual citizens should not exceed 20 million yen (about $153,846). Turkish law prohibits donations which exceed 50,000,000 lira (about $17,000). Taiwan law provides for a ceiling of 20,000 NT (about $740) and up to 20 percent of annual income to contributions to candidates and a ceiling of 200,000 NT (about $200,000) to political parties. Corporations, on the other hand, may contribute up to 300,000 NT (about $11,100) to a single candidate or up to 3,000,000 (about $111,000) to a party.

Requirements to disclose the source and amount of contributions exist in Australia, Germany, Greece, India, Israel, and Italy. Usually disclosure is required in the case of gifts exceeding a certain amount.

C. Limitations on Campaign expenditures

To guard against corruption, some countries have instituted limitations on the expenditures candidates or parties are allowed to incur. Such monetary ceilings on campaign related expenditures exist in Great Britain, India, Israel, Japan, Malaysia, and Taiwan.[15]

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[14] *Id.* at 23-4, especially the discussion on the role of PACs in diverting such money into political campaigns.

[15] For further information on the regulation of non-governmental funding, *see* Table No. 5.

IV. Enforcement of Campaign Finance Auditing Laws in Various Countries

Among the countries surveyed, only Israel, Taiwan, and Turkey have a system of mandatory auditing of political financing. The most elaborate scheme of inspection and auditing is found in Israel, where the authority is vested with the State Comptroller. A set of very specific laws and regulations prescribe the ways bookkeeping and documentation should be maintained. A prompt submission of party accounts is required. The State Comptroller has to submit his own report, and the whole process is made public. Severe monetary penalties and imprisonment may be imposed for violations. Similar auditing is done by the Constitutional Court in Turkey, although the audit may take years to complete. Violations of Turkish campaign financing laws may result in monetary penalties. In Taiwan, the audit is to be done by the Election Commission and various monetary penalties as well as terms of imprisonment may be imposed for violations.

Other countries included in this survey either do not require auditing of these financial records or, as in Canada and Germany, require submission of audited reports to a certain governmental or parliamentary body which is under no general obligation to check their accuracy. Greece is undergoing a change from the latter system to the former one: all parties and candidates are required by Greek law to publish and submit their balance sheets to the President of the Parliament and the Minister of the Interior. The examination of these documents, however, had always been limited to a superficial examination until recently when the Minister of the Interior in a 1990 decision stated that the audit must include the examination of all necessary documents.

In all countries, fraudulent actions with regard to political finances will be prosecuted under the penal law.

Conclusion

Several common concerns were raised in the countries surveyed. While all democratic countries proclaim equal political opportunities to be a basic principle, the modes of application vary and are sometimes even found to be defective.

One apparent problem is the lack of effective enforcement. Centralized auditing by an independent state body is most often non-existent or not mandatory. The issue of parties' or candidates' total or partial dependence on corporate contributions is another common concern. Many believe that the current application of disclosure requirements as to the source and amount of contributions and even the application of ceilings on contributions is still insufficient.

Although several countries have instituted ceilings on individual contributions, none of the countries surveyed have imposed a ceiling on the total amount of all income received from private contributions. Such a ceiling may be considered necessary in the future to effectively control the campaign financing of national elections. Many countries, recognizing that the expense of

advertising on television and other media is the main reason for the rapid growth in campaign costs, have been requiring additional free time for political advertisements.

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TABLE 1: Government Funding

Country	Direct Funding	Indirect Funding
Australia	Yes	Yes
Belgium	No	Yes*
Canada	Yes	Yes
Germany	Yes	Yes
Great Britain	No	Yes
Greece	Yes	Yes
India	No	Yes
Israel	Yes	Yes
Italy	Yes	Yes*
Japan	No	Yes
Malaysia	No	No
Mexico	Yes	Yes
Netherlands	No	Yes
Sweden	Yes	Yes**
Taiwan	Yes	Yes
Thailand	No	Yes*
Turkey	Yes	Yes*

* only broadcasting

** only publication

Table 2: Government Direct Funding

Country	Direct Funding	Conditions for eligibility	Amount
Australia	Yes	At least 4% of votes. Supply vouchers or auditor's report. Expenditures for which a claim is made must relate to the election campaign.	**Itimized basis:** in June 1990 - 91.223 cents per vote for House of Representatives, 45.611 cents for a Senate vote.
Belgium	None	N\A	N\A
Canada	Yes	For candidate, at least 15% of votes in an electoral district; for party, must spend at least 10% of limit.	**Itimized basis:** for a candidate the lesser of: 50% of amount allowed to spend and 50% of amount actually spent. For a registered Political party - 22.5% of election expenses if spent over 10% of expenses limit.
Germany	Yes	0.5% of votes for national party lists of candidates; or 10% of first votes cost in a constituency if no regional list has been accepted.	**Flat rate:** 5 DM for each person entitled to vote--distributed to the parties in proportion to the election result. An additional 6% of the total appropriation is granted to each party that attained at least 2% of the vote. The total grant to a party may not exceed its income from other sources over a four year period.
Great Britain	None	N\A	N\A

Table 2: Government Direct Funding

Country	Direct Funding	Conditions for eligibility	Amount
Greece	Yes	**The Party:** 1. participated in last election & got 3% of votes; 2. has a list of candidates in at least 2/3 of the electoral districts; 3. received at least 5% - 6% of votes, depending on coalition status.	**Flat rate:** In 1990 0.001% of the state budget; 900 million drachmae (ca. US$6 million dollars) 10% of which is distributed equally, remainder is distributed in proportion to number of valid votes received in last parliamentary election. In case of a coalition, the amount is divided by agreement amoung the parties to it.
India	None	N\A	N\A
Israel	Yes	**Party group:** 1. has at least 1 PM in preceding parliament; 2. is recognized as such by the Knesset (Parliament) Committee; 3. named 2 to 8 representatives familiar with its finanees to deal with the financing; 4. a combination of two or more parties that maintain one party group in the Knesset.	**Flat rate:** on Nov.'s 1988--320,000 New Shekels (ca. US$160,000) per seat won by the party group.

Table 2: Government Direct Funding

Country	Direct Funding	Conditions for eligibility	Amount
Italy	Yes	Parties presenting candidate list in more than 2/3 of constituent and obtaining no less than 300,000 votes or 2% of total amount of votes.	**Flat rate:** 30 billion lire (U.S. $ = about 26 million) 20% of total amount divided equally. Remainder - divided according to no. of votes received. In addition: fund for management expenses is distributed similarly (equals $ 72.7 million in 1981).
Japan	None	N\A	N\A
Malaysia	None	N\A	N\A
Mexico	Yes	Party should obtain more than 1.5% of the total ballot.	Amount to be determined.
Netherlands	None	N\A	N\A
Sweden	Yes	**Party support** - party obtained at least 2.5% of votes in last two elections; **basic support** - party got over 4% of votes; **supplementary support** - based on no. of partiamentary seats of each party.	**Flat rate:** Total = SEK 132.2 (ca. = $ 24 million).
Taiwan	Yes	Candidate should receive at least 3/4 of the no. of votes needed to be elected in their consitituency to receive subsidy.	**Flat rate:** NT $ 10 (ca. $ 0.37) for each vote received.

Table 2: Government Direct Funding

Country	Direct Funding	Conditions for eligibility	Amount
Thailand	No	N\A	N\A
Turkey	Yes	Party can qualify only if it obtained at least 7% of votes in last parliamentary election.	**Flat rate:** Total fund = one out of every 5 thousand lire of the yearly budget.

Table 3: Paid and Free Political Broadcasts in Various Countries

Country	Paid political advertising is permitted	Free time is given to political parties [1]
Australia	Yes	Yes
Austria	No	Yes
Belgium	No	Yes
Canada	Yes	Yes
Denmark	No	Yes
Finland	No	Yes
France	No	Yes
Germany	Yes	Yes
Greece	No[2]	Yes
Great Britain	No	Yes
India	No	Yes
Israel	No	Yes
Italy	No	Yes
Japan	No	Yes
Malaysia	No	Yes[3]
Mexico	Yes	No
Netherlands	No	Yes

[1] Based on country reports, prepared by the legal specialists of the Law Library of Congress and on *Who Pays the Piper Calls the Tune*, an inquiry into the conduct of the 1987 federal election and 1988 referendums by the Joint Standing Committee on Electoral Matters of the Australian Commonwealth Parliament, June 4, 1989.

[2] Not on state-owned stations.

[3] Only as to radio.

Chart 3: Paid and Free Political Broadcasts in Various Countries

Country	Paid political advertising is permitted	Free time is given to political parties
New Zealand	Yes	Yes
Sweden	No	Yes
Switzerland	No	Yes
Taiwan	No	No
Thailand	*	Yes
Turkey	No	Yes
United States	Yes	No

* No available information at this time.

Table 4: Indirect Government Funding:

Country	Transportation	Publication (printing mailing & posting)	Broadcasting Radio & TV	Tax Benefits	Encouragement of Voting	Others
Australia	Yes	No	Not by law but by practice by National Broadcasting Co.	No	Yes	No
Belgium	No	No	Yes	No	Yes	No
Canada	No	No	Yes	Tax credits rather than deductions	Yes	No
Germany	No	No	Yes	Yes	No	Subsidies to foundations
Great Britain	No	Yes	Yes	Gifts are exempt from inheritance tax	No	Free use of government facilities
Greece	No	No	Yes	No	Yes	No
India	No	No	Yes, by agreement	No	No	No
Israel	Yes	No	Yes	No	Yes	No

Table 4: Indirect Government Funding:

Country	Transportation	Publication (printing mailing & posting)	Broadcasting Radio & TV	Tax Benefits	Encouragement of Voting	Others
Italy	No	No	Yes, according to guildlines of the Parliamentary Committee	No	No	No
Japan	Yes	Yes	Yes	Yes	No	1. Free newspaper advertisements 2. Free sign board for posters 3. Arrangment of public meeting places 4. Election bulleti containing data or candidates
Malaysia	No	No	Yes, for radio only	No	Yes	No
Mexico	No	Yes	No	tax exemptions to income of parties	No	No

Table 4: Indirect Government Funding:

Country	Transportation	Publication (printing mailing & posting)	Broadcasting Radio & TV	Tax Benefits	Encouragement of Voting	Others
Netherlands	No	No	Yes	Donations from individuals are tax free if in the range of 1% to 10% of gross annual income. Corporate donations exceeding 500 guilders and less than 6% of the total profit are tax deductible.	Yes	No
Sweden	No	Yes	No	No	Yes	No
Taiwan	No	Yes	No	Yes	Yes	No
Thailand	No	No	Yes	Yes	Yes	No

Table 4: Indirect Government Funding:

Country	Transportation	Publication (printing mailing & posting)	Broadcasting Radio & TV	Tax Benefits	Encouragement of Voting	Others
Turkey	No	No	Yes	Yes, income of parties is tax exempt, except for income from property	Yes	No

Table 5: Non-Governmental Funding

Country	Prohibition on Types of Donors			Limitations on Contributions	Limitations on Expenditures
	Individuals	Legal Entities, Associations, etc.	Foreign Contributions		
Australia	No	No	No	Disclosure of donors if gift is more than $200 to individual candidate or $1000 to parties	No
Belgium	No	No	No	No	No
Canada	No	No	No	No	Yes
Great Britain	No	No	No	No, disclosure required from corporations (gifts in excess of £200) and trade unions	Yes

Table 5: Non-Governmental Funding

Country	Prohibition on Types of Donors			Limitations on Contributions	Limitations on Expenditures
	Individuals	Legal Entities, Associations, etc.	Foreign Contributions		
Germany	Anonymous donors contributing in excess of DM 1000 (ca. US$660)	Yes, political foundations charitable organizations & trade associations	Prohibited if in excess of DM 1000 unless flowing from the assets of German citizens, companies of more than 50% German ownership, European Parliament members and parties	No	No
Greece		Public sector, enterprise of public law & organization of local self-governing are prohibited	No	Disclosure of donors if the amount exceeds 200,000 drachmae (ca. US$1,225)	No

Table 5: Non-Governmental Funding

Country	Prohibition on Types of Donors			Limitations on Contributions	Limitations on Expenditures
	Individuals	Legal Entities, Associations, etc.	Foreign Contributions		
India	No	Government company & company in existence for less than 3 years are not allowed	Prohibited, unless prior governmental permission obtained	1. Corporate contributions shall not exceed 5% of its average net profit during the last 3 years 2. Disclosure of any corporate donations	No
Israel	No	Corporations; registered partnerships	Foreign corporations only	Individual gifts ceiling of 20,000NS (10,000 US $) or $20,000 in an election year	Monetary ceiling
Italy	No	No	No	Report of contributions to president of chamber of deputies	No

AUSTRALIA

I. Introduction

A. The Electoral System

The central power governing Australia is the Commonwealth Parliament, members of which are chosen by the people in national elections. As of 1987, the Parliament consisted of the House of Representatives, with 148 Members and the Senate, with 76 Senators. Members of the House of Representatives are chosen in single-member districts; Senators run at-large in each of Australia's six states and two territories. The House of Representatives sits for three years, unless dissolved and an election called earlier.[1] The party with the most seats in the House of Representatives forms the government and its leader becomes the Prime Minister.

All Australian citizens who are over eighteen years of age are required to register and vote, resulting in a voter turnout of over ninety percent for all national elections. Australia has a preference system whereby you may vote for a second choice candidate. If your candidate doesn't win following the first ballot count, the second choice votes are then distributed among the candidates and this is continued until the required number of Representatives are chosen by majority vote. The Senate elections also employ a method of proportional voting which more accurately recognizes the various political opinions in the country. The national government provides direct funding for certain electoral expenses of candidates and parties.

B. The Party System

The Australian Labor Party and the Liberal Party are the two strongest parties, having electoral support throughout the country. The National Party, a very strong third party, at times combines with the Liberal Party. The control of the party over political activity is "more elaborate and intense in Australia than in most if not all of other western nations,"[2] with four out of five voters voting for the party rather than the individual candidate.[3]

C. The 1987 Elections

An Australian election, from the time of the announcement through the campaign to the announcement of the final results, takes about two months to complete. The 34th Federal Parliament was dissolved on June 5, 1987, and writs for the election of Senators and Members of the House of Representatives were issued the same day. The election rolls were closed on June 12th and nominations were closed on June 18th. The voting was conducted on July 11th and the

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[1] *The Commonwealth Yearbook*, 105 (1990).

[2] D. Jaensch, *The Australian Party System* 10-12 (1983).

[3] B. Stevens, *Elections: How? Why? When?* 7 (1984).

final results and all election writs were returned by August 20, 1987. The 35th Parliament met for the first time on September 14, 1987.[4] The 1987 election resulted in the following vote distribution, by party:[5]

House of Representatives

Name of Party	Number of Votes	Percentage
Labor Party	4,232,563	45.8
Liberal Party	3,191,059	34.6
National Party	1,064,230	11.5
Democrats	557,259	6.0
Others	189,975	2.1

Senate

Labor Party	4,013,860	42.8
Liberal Party	3,939,432	42.0
National Party	(included with the Liberal Party)	
Democrats	794,107	8.5
Others	624,281	6.7

D. Party Spending, Funding - 1984 Changes

Prior to 1984, the unrealistic limitations on spending by a candidate for office amounted to $500[6] for a candidate for the House of Representatives and $1,000 for a candidate for the Senate. The 1984 Act provided for the distribution of public funds to parties and candidates in the amounts of 60 cents for each first preference vote for the House and 30 cents for each first preference vote for the Senate if the elections are at the same time and 45 cents for each first preference vote in a Senate election held at a separate time.[7] Beginning in 1984, agents for the parties and the candidates must report all gifts or series of gifts if the value amounts to $200 or more for a candidate and $1,000 or more if donated to a party or group of candidates. Former limitations on campaign spending have been removed.

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[4] Australian Electoral Commission, Annual Report 1987-1988, 10 (1988).

[5] Parliament of Australia, Legislative Research Service, *Federal Election Results*, 1949-1987, 19,35 (1988).

[6] Australian Dollars, equivalent to US$0.78 in February 1991 ["Foreign Exchange" *New York Times* D18 (February 20, 1991)].

[7] B. Stevens, *supra* note 3, at 97.

E. The Australian Electoral Commission

The Electoral Commission is responsible for conducting all aspects of a national election. It maintains the electoral rolls and enforces the compulsory enrolment; promotes public awareness of electoral and parliamentary matters; conducts research into electoral matters; publishes materials relating to the election procedures; and reports to the Minister on electoral matters.

The Commission maintains a register of candidates, groups of candidates and political parties. Nominated candidates must provide a deposit of $500 for the Senate and $250 for House of Representative. The deposits are refunded if the candidate receives at least four percent of the valid votes cast in the election. Parties must register in order to be eligible for public funding in reimbursement for campaign costs of their candidates.

The Government's cost for the 1987 election was $47,050,467, of which $10,298,000 was given directly to the parties and candidates.[8] The regulation of elections and election campaigns by the Commission is for the purpose of not only producing equitable distribution with regard to representation, but also to encourage fairness in the competition process. This involves providing for neutral election officials, enforcing the laws against bribery, and misleading advertisements, and the regulation of financing for elections. This report deals with the latter public financing of Australian national elections.

II. Government Funding

A. Direct Funding

1. Funds are provided directly to the candidate and/or parties. If a candidate is endorsed by a party, the party will receive the funds. However, an unendorsed candidate or independent may claim expense money, if the established criteria for reimbursement are met.

2. If a candidate or a party polled at least 4 percent of the first preference votes in the last election, funding may be provided.

3. A candidate or a party must be registered and must supply vouchers or an auditor's report for the amount claimed.

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The Australian Government provides funds to eligible political parties that are registered in the Register of Political Parties as well as endorsed and unendorsed candidates and Senate groups. Candidates endorsed by registered political parties make claims for payment through the agent of the state branch of the party. In fact, the entire funding and financial disclosure scheme operates through a system of agents. The Electoral Commission maintains a Register of Party Agents, including the name and address of all appointed agents. Where a political party is active

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[8] Australian Electoral Commission, *supra* note 4, at 13.

in more than one state, it must have an agent in each state, appointed by the state branch. Where all members of a group of candidates have been endorsed by the same party, the agent for the state branch is the agent for the group. A single candidate may appoint his/her own agent.[9] If a candidate, party or group polls at least 4 percent of the total first preference votes cast in the previous election, there is entitlement to claim public funds toward specific campaign expenditures. The rate of funding is reviewed and adjusted twice a year by the Electoral Commission in line with the All Consumer Price Index number published by the Australian Statistician.[10] The relevant amounts per vote between January and June 1990 were 91.223 cents for a House of Representatives vote; 45.611 cents for a Senate vote on the same day as a House of Representatives general election; and 68.417 cents for a Senate vote only.[11]

Claim forms are provided by the Commission, and the claims must be lodged with the Commission within twenty weeks after the polling day. Although two interim payments claim forms may be submitted prior to the final claim form, no payments are made until polling day. A political party may submit a single claim form, regardless of how many elections are held on the same day.

All claims must be supported by evidence of the incurred expense by, or with the authority of, the relevant state or territorial branch of the claiming party. This may take the form of vouchers and invoices from broadcasting stations, newspapers, publishers, printers or advertising agencies. The expense must relate directly to the election campaign. General running expenses of the party or candidate are not included.

If a party or candidate does not poll at least 4 percent of the vote in several of a state's electoral districts, the party or candidate may not claim expenses from those particular districts for the purpose of reimbursement. If a candidate is endorsed by two parties, they would have to divide the payment into shares in accordance with a prior agreement or the Electoral Commission will determine the method of disbursal.[12] Payment toward campaign expenses is made out of the Consolidated Revenue Fund.[13]

Expenditures that will *prima facie* be approved to support a claim include: interest paid on borrowed money to finance the election campaign; travel and accommodation costs; wages paid to office staff and campaign workers under a pre-arranged contract of employment; costs for campaign novelties, office equipment and campaign rallies; auditing, bookkeeping and insurance

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[9] The Commonwealth Electoral Act, 1918-1990, §§ 288,289.

[10] Australian Electoral Commission, 1 *Election Funding and Financial Disclosure Handbook* 10 (1990).

[11] Australian Electoral Commission, 3 *Election Funding and Financial Disclosure Handbook* 6 (1990).

[12] The Commonwealth Electoral Act, 1918-1990, § 299(4)(b).

[13] *Id.* § 302.

costs; postage and telecommunication costs; and costs for renting vehicles, renting space and conveying voters to the polls.[14]

Expenditures that will *prima facie* not be approved to support a claim include: payments to workers not covered by an employment agreement; long term capital expenditures; accounts for permanently installed telephones or long-term rental of postal boxes; repairs to premises or vehicles not made necessary entirely by the election campaign; costs involving raffles or other fund-raising activities unless there is a net loss that would support the claim; post-election parties; publicity for a membership drive, expenses with regard to state or territorial elections; and nomination deposits.[15] Although costs to dismantle a campaign headquarters may be used to support a claim, the general rule is that expenses incurred after the polling day will not be accepted.

The parties must be careful that the electoral district organizations, the local endorsed candidates, the campaign committees and any others who are authorized to incur expenses maintain proper records of these activities in order to support a state or territorial branch's claim for public funding. In cases where a voucher or invoice is made out to someone other than a candidate or member of a group, written authority for the person to incur the expense on behalf of the candidate or party must be provided to the Commission.[16] Where a Commonwealth and a state election overlap, care must be exercised to maintain separate records of expenses, since only those incurred for the Commonwealth election are reimbursable. The following table is a summary of donations received, expenditures incurred and public funding made for registered political parties for the 1987 federal election:[17]

Party	Donations($)	Expenditures($)	Public Funding($)
Australian Labor	5,066,224	10,463,948	4,759,413
Liberal	4,029,000	6,098,314	3,495,955
National	1,720,166	4,063,395	1,197,637
Democrats	116,300	556,073	710,009

[14] Australian Electoral Commission, *supra* note 4, at 8-9 (1990).

[15] *Id.* at 9.

[16] Australian Electoral Commission, *supra* note 4, at 8 (1990).

[17] The Australian Parliament, Joint Standing Committee on Electoral Matters, *Who Pay the Piper Calls the Tune* 74 (1989).

Nuclear Disarmament	18,134	25,955	5,927
Sen. Brian Harradine Group	12,414	20,190	14,128
N. Terr. Liberal Party	374,171	243,672	24,149

B. Indirect Funding

1. The government provides transportation to the polls where needed. Where the transportation is provided by the party, it can be claimed as a legitimate expense for direct funding.

2. The government spends a great deal on general advertisement of the election and to educate the public (publications by a party or candidate is another legitimate expense that can be claimed for reimbursement).

3. Free advertisement on the Australian Broadcasting Company station is provided within the Company's policy announcement, but commercial advertisements are claimed as an expense by the parties, or if provided free would be reported as a gift or contribution.

4. There are no tax credits for contributions to political parties or candidates.

5. Public funds are used to educate the public and to encourage voting--which is compulsory.

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The most direct way to gain a true perspective concerning the indirect funding by the Government, in contrast to the direct payment to the candidates and parties, is to look at the following table representing the total expenses incurred by the Electoral Commission for 1987-1988:[18]

[18] Australian Electoral Commission, Annual Report: 1987-88, at 94 (1989).

Expense Incurred	Central/State Offices	Divisional	Total
Staffing	$1,464,107	$16,411,606	$17,875,713
Freight	788,062	287,380	1,075,442
Premises Rental	21,009	707,071	728,080
Postage/Telephones	2,017,767	570,189	2,587,956
Printing & Equipment	4,277,854		4,277,854
Tally Room	203,666		203,666
Advertising	4,733,176		4,733,176
Data Preparation	127,041		127,041
Scanning	771,302		771,302
Ballot Boxes, etc.	1,231,590		1,231,590
Training of Officials	760,830		760,830
Travel	169,084		169,084
Vehicles	110,847		110,847
General Supplies	375,186		375,186
Computer Services	291,022		291,022
Miscellaneous	637,631	318,694	956,325
Scanning Centers	425,275		425,275
Payroll Processing	51,421		51,421
Election Expenses	$18,456,870	$18,294,940	$36,751,810
Public Funding	$10,298,657		$10,258,657
Total Election Cost	$28,755,527	$18,294,940	$47,050,467

1. Advertising

The largest single expense, next to direct payments to the candidates and parties, is for advertising. An advertising firm is chosen, following the receipt of bids, to coordinate the entire campaign as well as to provide for the public information and education activities of the Commission. A continuing program of education directed to young people approaching voting age is carried out through school visits, public displays and the distribution of informational materials about the parliamentary and election processes. Additional assistance is provided to aboriginal groups through eleven field offices.[19]

Mobile polling provisions have to be made which in some cases include light aircraft and helicopter service. Postal voting is encouraged. Over 600,000 postal votes were cast during the 1987 election including 36,991 postal ballots received through a central overseas office.[20]

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[19] Australian Electoral Commission, *supra* note 4, at 2-4.

[20] *Id.* at 94.

2. Broadcasting

The Australian Broadcasting Corporation (ABC) is not obliged by law to provide free broadcast time to the participating parties to an election. However, if it broadcasts political matter during the campaign, it must give representation to the other parties.[21] It is up to the discretion of the ABC's Election Coverage Committee to determine how the public is to be informed on "issues of current debate and on the position and policies of parties contesting the election,"[22] and the current ABC policy has been to allocate free time for political advertising during the election campaign.[23] The allocations are made to a party contesting at least 10% of the vacant seats and which polled at least 5% of the votes cast in the immediately preceding election. The Government party and the Opposition party are allotted equal time. In the case of coalition parties in opposition, they must divide the time according to an agreement between the involved parties to the coalition.[24] The following chart shows the allocation of free time by the Australian Broadcasting Corporation for the 1987 federal election:[25]

Political Party	Free Time Allocation
Australian Labor Party	1 hour 30 mins. (radio) 1 hour 30 mins. (television)
Liberal & National Parties	1 hour 30 mins. (radio) 1 hour 30 mins. (television)
Australian Democrats	20 mins. (radio) 20 mins. (television)
Independent Senators (in each of the Senator's states)	5 mins. (radio) 5 mins. (television)

Commercial television and radio stations do not provide free time for political advertisements. Some stations broadcast party policy speeches or policy documentaries at no charge. They do, however, broadcast paid political advertisements. The Joint Standing Committee on Electoral Matters of the Australian Parliament has recommended that seventeen minutes of free

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[21] Broadcasting Act, 1942-1987, § 116.

[22] The Australian Parliament, *supra* note 17, at 30.

[23] *Id.* at 31.

[24] *Id.* at 32.

[25] *Id.* at 33.

time each day of the campaign should be allowed on all television and radio stations for political parties to advertise their policies, and that an independent committee should be established for allocating the free time among the parties and candidates.[26] The Committee felt that to place a ceiling on individual political advertising would result in the growth of political action committee (PACs) as in the United States.

III. Non-Governmental Funding by Residents

A. Limitations on political contributions

1. There is no limitation on persons or organizations concerning contributions as long as the gift is properly identified.

2. There is no limitation on the amounts contributed. However, donors who contribute more than $200 to individual candidates or $1,000 to parties must be identified.

3. There is no limitation on campaign expenditures.

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There is no limitation on the amounts that an individual or group may donate to a candidate or political party as long as the proper disclosure procedures are observed. Anonymous donations over the stated amounts are, therefore, unlawful. The disclosure period begins on the 31st day following the previous election and ends on the 30th day after the polling day for the current election. The Commission sends the forms for reporting gifts to the appropriate agents. If no gifts are received of the type required to be disclosed during the period, a "nil" return must be filed.[27]

A gift is defined to include: cash; any disposition of property for no payment; a disposition of property for less than its value; and provision of a service free of charge or for less than the normal commercial rate. Gifts also include: additional money paid with membership subscriptions; donations from a patron of the party; uses of commercial premises or employees where a donor continues to pay the rent or wages; free use of a motor vehicle; provision by broadcaster of free time or time at a lowered rate; advertising space provided free of charge or less than the normal commercial rate; and printing for free or less than the normal rate.[28]

Individuals need not report gifts under $200. Parties or other groups need not report gifts of under $1,000. The return must show the monetary value of the gift as well as the name and

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[26] *Id.* at 98.

[27] The Commonwealth Electoral Act, 1918-1990, § 307.

[28] Australian Electoral Commission, *supra* note 10, at 18.

address of the donor, and political parties must issue receipts for each gift, no matter how small, since a donor may give a series of gifts that total more than $1,000 during the disclosure period.[29]

Donations deposited into accounts for the following purposes are regarded as related to Commonwealth elections and, therefore, would be disclosable: transfers, loans or collateral withdrawn to assist an election campaign; expenditures used to support claim for public funding; expenditures incurred in a campaign on an issue that is part of a Commonwealth election campaign; expenditures incurred for raising funds for use during the election campaign; wages for hiring additional staff for campaign purposes; overtime paid to long-term administrative staff; expenditures on postage, telecommunications and freight generated by an election from the announcement until the polling day; travel and accommodations expenses of party members engaged in election campaigning; running costs for vehicles during the period; expenditures on holding rallies and meetings; expenditures on premises rented specifically for campaign committee rooms; expenditures for the purpose of conveying voters to the polls; and payments to scrutineers (poll-watchers).[30]

Items that need not be disclosed include: volunteer labor, including legal, financial or other expert advice from a party member; public funding payments; annual membership subscriptions paid to the party; and entitlements for Members of Parliament and Ministers in their official capacities. In addition, income derived from investments and loans need not be reported, nor free time offered for interviewing a candidate by a broadcasting company.[31]

The name and address of the real donor must be included.[32] If the donor is an unincorporated association or a trust fund, the names and addresses of the executive board, trustees or committee must be included. A gift drawn on a trust account is *prima facie* a gift from an undisclosed principal and not the drawer of the check. The principal or client's name must be disclosed. Gifts from undisclosed principals are unlawful and are forfeited to the Commonwealth.[33]

B. Broadcasters and Publishers Advertisement Returns

Broadcasters are required to provide information on every political advertisement broadcast during the electoral campaign period. If a broadcast is provided free-of-charge or less than the

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[29] *Id.* at 19.

[30] *Id.* at 23-24.

[31] *Id.* at 19-20.

[32] The Acts Interpretation Act, 1901, § 22 defines a person or party as including a body politic or corporate as well as an individual.

[33] Commonwealth Electoral Act, 1918-1990, § 306(5).

normal commercial rate, it will be considered a gift. If the normal rate is charged, it will provide a backup to the candidate or party's claim for election expense reimbursement by the Commission.[34]

A similar situation applies to publishers who publish electoral advertisements. Where the total number of charges amounts to at least $1,000, a publisher is required to submit a return containing details of all electoral advertisements published by the candidate or party involved. Publishing a policy speech free of charge is not considered a gift. However, purely political advertisements published free of charge or for less than the regular rate would be considered a gift. A statement must be attached to the return showing the exact difference between the normal charge and any charge that is less than the regular rate. Records from which a return is compiled must be maintained for one year after the polling day.[35]

Copies of all returns lodged with the Commission are made available for public inspection at the Commission's central office. The Commission has extensive powers under the Act to investigate possible breaches of the funding and disclosure requirements.[36]

C. Tax Incentives

There are no tax incentives in the form of credits or deductions for contributions to federal election campaigns or political parties or candidates. The Joint Standing Committee, in its inquiry into this issue, felt that tax deductions would favor those with higher incomes who make the large donations and result in a loss of revenue for the government.[37]

IV. Regulation of Foreign Contributions

There are no limitations or special regulations with regard to foreign campaign contributions. The same rules apply to all contributors. Names and addresses must be made publicly available where donations amount to $200 or more for an individual candidate and $1,000 or more for a party or group of candidates.

V. Auditing Procedures

Although the Commonwealth Electoral Act does not require that the details of gifts and claims for expenditures be audited, the Commission will accept a claim for public funding from an agent, if it is supported by a report from a registered company auditor. The auditor's report will be accepted in lieu of original vouchers. The auditors must follow a checklist provided by the Commission and check all vouchers in verifying the claims of the agent. The auditors must verify

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[34] Australia Electoral Commission, 5 *Election Funding and Financial Disclosure Handbook* 5-7 (1990).

[35] *Id.* at 10.

[36] *Id.* at 12.

[37] Australian Parliament, *supra* note 17, at 91.

the legitimacy of the amounts claimed and that the expenditures were made for the purpose of the election campaign.[38] The Electoral Act provides for authorized officers of the AEC to conduct investigations. However, the Attorney General has held that it does not authorize the production of a party's records relating to gifts. The Joint Standing Committee, recognizing that financial disclosure is an important part of the established system, has recommended that the AEC be authorized to conduct spot audits of the electoral financial activities of registered parties and third parties with financial relationships with registered parties.[39]

VI. Offenses and Penalties[40]

Offense	Sec. of Act	Offender	Max.Penalty
Failure to furnish return when due	§315(1)	Agent of party Agent of candidate, Senate, or others and any others required to furnish a return under §§ 305, 309-311	$5,000 $1,000
Continued failure following conviction for failure to furnish a return by due date $100 per day	§§ 315(8)-(10)	All of the above	
Furnishing an incomplete return	§ 315(2)	All of the above	$1,000
Failure to retain records	§ 315(2)	All of the above plus officers of parties and groups	$1,000
Knowingly furnishing false or misleading information in claim or return	§§ 315(3) & (4)	Party agent Agent of candidate, Senate group or other person required to furnish a return	$10,000 $5,000

[38] Australian Electoral Commission, 4 *Election Funding and Financial Disclosure Handbook* 6,15 (1990).

[39] Australian Parliament, *supra* note 17, at 82.

[40] Australian Electoral Commission, *supra* note 10, at 38.

Knowingly furnishing false or misleading information to person making a claim required to furnish a return	§§ 315(6A) & (7)	Person	$1,000
Failure to produce documents or give evidence or giving evidence that is false or misleading	§ 316(5)(6)	Person	$1,000 and/or 6 months in prison

VII. Conclusion

The rising costs of television advertising and the increasing use of that medium by the political parties has brought about increased reliance by the parties on the financial sponsorship of large corporations. This has caused concern that the open democratic system of electoral participation in Australia is in danger of being unduly influenced by such sponsorship.[41] It has also been noted that one method the parties are using to get around reporting all donations is through income from capital donations that need not be reported.

The Australian Parliament's Joint Committee on Electoral Matters held an inquiry concerning the 1987 elections in order to alleviate these concerns. Several options were discussed, including increased public funding, tax deductibility of gifts, a ceiling on paid advertisements, a complete ban on political advertisements, and the provision of free broadcasting time.[42] It was felt that increased public funding would fall most heavily on the taxpayer and that tax deductions would most favor the wealthy.

A number of recommendations were made, including the following:

- that the Australian Electoral Commission be empowered to conduct spot audits of the electoral activities of registered political parties;

- that the disclosure of all forms of income and expenditures be required by the registered parties;

- that the audit and disclosure provisions also apply to unregistered third parties with financial relationships with a registered party; and

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[41] Australian Parliament, *supra* note 17, at xi.

[42] *Id.* at 89-94. Free time is provided in most western democracies, with the exception of Australia, Norway, and the United States (*id.* at 90).

- that the Broadcasting Act should be amended to provide for free political broadcasting time during the campaign period,[43] with an independent committee established to monitor the equitable allocation of free time among the parties and candidates.[44]

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[43] *Id.* at xiii-xv. This recommendation of the Committee was not adopted by the Government; "... instead the Government now proposes to ban both paid advertising and free-time except for a provision to allow the broadcast of the parties' main policy statement" [D. White, Chairman, ABC Election Committee]. This ban would apply to all electronic media, whether public or commercial stations and/or networks.

[44] The formula for allocating funds would be used as a guide in providing free time [the Australian Parliament, *supra* note 17 at 11].

CANADA

I. Introduction

The two chambers of Canada's Parliament are the Senate and the House of Commons. Since the members of the former body are appointed by the Governor General,[1] acting upon the advice of the Prime Minister,[2] the only federal elections held in Canada are the contests called to fill all of the latter body's seats in a general election or one or more of its empty seats in a special by-election.[3] Members of the House of Commons are elected in single representative districts commonly referred to as "ridings."

Following the two by-elections that were contested in December of 1990, the 295 seats in the House of Commons were held by 158 Progressive Conservatives, 80 Liberals, 44 New Democrats, 3 independents, 9 members of the Bloc Quebecois splinter group, and 1 member of the new Reform Party. Since Canada was created in 1867, the presence of at least three major parties on the national political scene has made it very difficult for any one party to capture and hold more than half of the seats in the House of Commons. By accomplishing this feat in 1984 and 1988, Canada's last two general elections, the Progressive Conservative Party enabled Prime Minister Mulroney to become the first party leader to ever form two conservative majority governments.[4]

During the 1988 general election campaign, the Prime Minister reportedly indicated that he was in favor of changing Canada's laws respecting campaign financing.[5] These laws evolved out of the Electoral Expenses Act of 1974[6] and are now contained in the Canada Elections Act.[7]

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[1] The Governor General represents The Queen in Canada and, on the advice of Canada's Prime Minister, is appointed by Her Majesty to exercise most of the functions of an official or formal Head of State.

[2] The Senate normally has 104 members. However, in September of 1990, Prime Minister Mulroney relied upon a fairly obscure provision in the Canadian Constitution to increase the upper chamber's membership by adding eight new seats. The Prime Minister took this controversial step in order to enable his party to assume control over the Senate and ensure the enactment of Canada's new value added tax.

[3] This means that there are no national elections in which, as in a presidential election in the United States, all voters choose from the same list of candidates. Canada's prime minister is selected by the political party that has the largest number of seats in the House of Commons.

[4] The latter victory ensured Senate approval of the Canada-United States Free Trade Agreement Implementation Act, 1988 Can. Stat. ch. 65.

[5] Canadian Press, (wire service) Nov. 15, 1989.

[6] 1973-74 Can. Stat. ch. 51.

Despite the many changes that have been made to the original act, weaknesses in the Canadian system for financing federal elections have been the subject of increasing criticism emanating from many different sources, even though the general notion that the Federal Government should play an active role in "evening the playing field" is almost universally accepted.[8] Since its inception, the Canadian system has provided for: 1) the payment of reimbursements to candidates of all or a portion of their expenses incurred during an election campaign; 2) the granting of free broadcasting time to qualified political parties; and 3) the availability of limited tax deductions for contributors to parties and candidates. The 1974 law did not authorize the payment of reimbursements to political parties for any portion of their separate election expenses, but this situation was changed in 1980. Nevertheless, most critics seem to believe that Canada's current campaign financing laws still do not go far enough in promoting their objectives and that they also contain too many loopholes.

In response to the many criticisms that have been levelled at Canada's current campaign financing system, the Prime Minister established a Royal Commission on Electoral Reform and Party Financing in November 1989. The five members of this study group intend to release a report in the fall of 1991. It would appear that the Government's intention is to respond to this document's recommendations by drafting a bill to reform the Canada Elections Act as soon as possible.[9] Thus, the Canadian laws to be described in this country study are likely to be significantly modified in the next year or so. The directions those modifications are expected to take will be identified in the concluding section of this report.

II. Government Funding

A. Direct Funding

Under the Canada Elections Act, a candidate who receives at least 15 percent of the votes cast in an electoral district is entitled to a partial reimbursement out of the federal Consolidated Revenue Fund. The maximum amount of this reimbursement is the lesser of 50 percent of the amount he or she was allowed to spend during the election campaign and 50 percent of the amount he or she actually spent in trying to win a seat in the House of Commons.[10] Similarly, a registered political party that spends at least 10 percent of the election expenses limit imposed upon it during an election campaign is entitled to a Government-funded reimbursement of 22.5 percent of its elections expenses.[11] Thus, in order to explain how direct subsidies work under the

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[7] R.S.C. ch. E-2 (1985), as amended

[8] One group that has taken a contrary, hands-off stance, however, is Canada's new Reform Party [Canadian Press, Sept. 21, 1990].

[9] Information obtained from the Office of the Chief Electoral Officer in Ottawa, Canada.

[10] Canada Elections Act, R.S.C. ch. E-2, §§ 241-244 (1985).

[11] *Id.* § 322.

current Canadian system, it is necessary to first describe the limitations that system places on campaign expenditures by individual candidates and political parties.

1. Bases for Reimbursements

a. Individual Candidates

In order to eventually qualify for a reimbursement of half of his or her election expenses, a candidate must follow the detailed rules set out in the Canada Elections Act. The first step a candidate is required to take, after a general or by-election has been called, is to appoint an "official agent." During the course of the campaign, this individual is responsible for paying all expenses, recording contributions, and listing the names of contributors who donate in excess of $100.[12] In addition to those tasks, an official agent must make sure that the total amount of his or her candidate's expenses falls within the limits permitted by the Canada Elections Act. Those limits, which do not include travel, living, and other reasonable "personal expenses,"[13] are determined by taking the original ceiling on expenditures established by the 1974 Act[14] and multiplying them by the cost-of-living fraction that the Chief Electoral Officer has been required to calculate and publish on an annual basis since 1983.[15] The following table lists the limits on campaign expenditures that were allowed in the general election of 1979 and the ceilings that were in place for the by-elections of 1990.[16]

	1979	1990
For each of the first 15,000 names on the list of electors for the candidate's district	$1.00	$1.699
For each additional name over 15,000 but not exceeding 25,000	$0.50	$0.8495
For each name exceeding 25,000	$0.25	$0.425

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[12] *Id.* §§ 229(1). All figures are in Canadian dollars. During the first six weeks in 1991, the Canadian dollar was worth approximately U.S.$0.86.

[13] Canada Elections Act, R.S.C. ch. E-2, §§ 2, 209, and 217(2) (1985).

[14] Election Expenses Act, 1973-74 Can. Stat. ch. 51, § 61.1.

[15] Canada Elections Act, R.S.C. ch. E-2, §211. The fraction for April 1, 1990 to March 1, 1991 was 1.699 [Can. Gaz. Pt. I, 569 (Feb. 17, 1990)].

[16] According to the former Chief Electoral Officer the average reimbursement to candidates who ran in the 1984 general election was $16,823 [Canadian Press, July 8, 1988].

Special provisions exist to increase the limits on campaign expenditures in the large, sparsely-populated ridings in the northern regions of the provinces as well as in the Yukon and Northwest Territories.[17]

Before the general election of 1979, the first campaign held under the current system, it was estimated that the average electoral district in Canada contained roughly 50,000 voters and that, consequently, the average individual candidate would have a campaign budget of approximately $26,000.[18] Since the modest growth in Canada's population over the past twelve years has been reflected in a corresponding increase in the number of seats in the House of Commons, it would appear that the average candidate would be allowed to spend about $44,200 on his or her campaign, if an election were to be held in the first quarter of 1991.[19]

Using the above figures, it can be seen that, if an election were to be held in the first quarter of 1991, the maximum reimbursement that the average candidate who received at least 15 percent of the votes in his or her riding could qualify for would be approximately $22,100.[20] This figure does not encompass the special sum of $750 which a candidate is allowed to claim on account of an auditor's fee that he or she was required to pay.[21]

b. Political Parties

While Canada does not have national elections in which all voters have the chance to mark their choices next to the same list of candidates, its national election campaigns are highly centralized. Candidates are not required to belong to a national party and independents are occasionally elected. However, in the vast majority of contests, the strength and popularity of a candidate's political party--and particularly his or her party's leader--is the single most important factor in determining their outcomes.

The Canadian campaign financing system recognizes the central role parties play in the Canadian political system by allowing them to incur expenses on their own behalf, separate and apart from the expenditures of their candidates in individual ridings. What this has meant in practice is that Canada's national political parties have been able to conduct coordinated advertising campaigns through the print and electronic media. These campaigns have recently been conducted on fairly large scales, but they have not been uncontrolled. The Canada Elections Act states that parties are only allowed to spend an amount determined by multiplying a sum indexed to reflect

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[17] Canada Elections Act; R.S.C. ch. E-2, § 210(2).

[18] P. Jackson & D. Sheehy, *Auditors on the Campaign Trail*, 111 *CA Magazine* 23 (July 1978).

[19] Canada Elections Act, R.S.C. ch. E-2, § 211. A new figure for the year beginning on the first day of April is published annually in the *Canada Gazette*.

[20] Reimbursements to candidates who ran in the general election of 1984 totalled approximately $11.7 million [Chief Electoral Officer, *supra* note 16].

[21] Canada Elections Act, R.S.C. ch. E-2, § 243(4)(2) (1985).

increases in the cost of living by the number of names on the preliminary list of electors[22] in every electoral district contested by a member of that party.[23] This sum was originally set at $0.30, but by 1991, it had already grown to 0.51.[24] As a result of this increase, each of the three main Canadian political parties was allowed to increase its expenditures from about $6.4 million in 1984 to about $8 million in 1988.[25]

The limits placed on campaign expenditures by political parties do not apply to contributions made by a national party to an individual candidate. When the opportunity arises, a party will usually decide to incur eligible election expenses through its individual candidates rather than on its own behalf. This is because 50 percent of a candidate's eligible expenses may be reimbursed by the Government while only 22.5 percent of a party's eligible expenses may be repaid out of the Consolidated Revenue Fund.

B. Conditions

Under the Canada Elections Act, reimbursements can only be paid on account of election expenses actually incurred by a candidate or political party. The term *election expenses* is defined to mean costs incurred "for the purpose of promoting or opposing, directly and during an election, a particular registered party or the election of a particular candidate."[26] One type of expenditure that is specifically encompassed by this definition is the cost of providing *light refreshments*.[27]

III. Indirect Funding

A. Transportation

The Canada Elections Act does not provide for the payment of subsidies to persons who transport voters to polls.

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[22] In 1988, there were slightly over 17,160,000 names on the preliminary lists of electors in Canada [Chief Electoral Officer, *1989-90 Estimates* 21 (1989)].

[23] Canada Elections Act, R.S.C. ch. E-2, § 39 (1985).

[24] *Id.* § 211 (1985) and *see* Explanatory note 15, *supra* note 15.

[25] Chief Electoral Officer; *supra* note 22 and XVIII *Ottawa Letter* 779-780 (1988).

[26] Canada Elections Act, R.S.C. ch. E-2, § 2 (1985).

[27] *Id.*

B. Publications

The costs of publishing and distributing campaign literature may be partially offset by reimbursements from the Consolidated Revenue Fund, but there are no provisions in the Canada Elections Act for the direct or full subsidization of such material.

C. Advertising

Under the Canada Elections Act, networks that reach "a majority of those Canadians whose mother tongue is the same as that in which the network broadcasts" are generally required to give every registered political party at least two free minutes of free broadcasting time between the twenty-ninth day before polling day and the second day before a general election.[28] One qualification to this rule is that the amount of free broadcasting time so offered by a network must not be less than the total amount that was granted by it in the previous general election.[29] Thus, if the number of qualified political parties diminishes from one general election to the next, the remaining parties are entitled to divide up more time than they would otherwise have been able to claim.[30]

One reason that Canada does not require radio and television stations to offer more free broadcasting time to political parties is that the Canada Elections Act does require every broadcaster to make six and a half hours of broadcasting time available for purchase by all registered parties during the period beginning with the twenty-ninth day before polling day and ending the second day before a general election.[31] The Canada Elections Act states that these hours are to be divided by agreement of the parties. If such an agreement cannot be reached, they are to be allocated by the Government-appointed Broadcasting Arbitrator.[32] It is an offense for any publisher or broadcaster to charge a political party more for running one of its announcements than the lowest rate it charged any other advertiser for equivalent space or time.[33]

D. Tax Credits

Under Canada's Income Tax Act, taxpayers are not allowed to deduct political contributions in calculating their taxable income for a year, but they are given tax credits of up to $500 per year

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[28] *Id.* § 316. This section also applies to political parties that have qualified to purchase broadcasting time but have chosen not to exercise that right.

[29] *Id.*

[30] The amount of this excess time is to be awarded in proportion to the amount of broadcasting made available for purchase by registered political parties.

[31] R.S.C. ch. E-2, § 307.

[32] *Id.* § 309.

[33] *Id.* § 321.

on account of donations to registered political parties or official candidates in a federal election.[34] Individuals, corporations, and other entities are given credits of 75 percent of their contributions up to $100, 50 percent of any further contributions of up to $450, and 33.3 percent on any additional contributions of up to $600. Since these credits come directly off the amount of income tax that the taxpayer would otherwise have to pay, they are much more generous than a tax deduction.

E. Encouraging Voting

During general election campaigns, Canada's Chief Electoral Officer implements a "comprehensive voter information program" by placing advertisements in newspapers and messages with radio and television stations.[35] The total amount spent on this program during the 1988 general election was approximately $4 million.[36] Elections Canada publishes a fairly long list of guides to the Canadian electoral system. These guides are made available to candidates, agents, and members of the public.[37]

IV. Funding by Residents

The Canada Elections Act does not place limits on contributions to registered political parties, riding associations, or official candidates by individuals, corporations, or other types of legal entities. Thus, Canada's major political parties are free to amass "treasure chests" in anticipation of the next general election. Individual candidates, however, are only allowed to pay for expenses incurred during an election campaign out of funds collected during the same period. Canada's political parties maintain such accounts as the Progressive Conservative Canada Fund, but the Canada Elections Act does not authorize the establishment of any type of an entity similar to a political action committee in the United States. As was explained in connection with the reimbursement schemes contained in the Canada Elections Act, the limitations on campaign expenditures by parties and candidates vary from riding to riding and from election to election.[38]

V. Foreign Contributions

The Canada Elections Act does not place limitations on political contributions by foreign individuals, corporations, or organizations. This statute also fails to provide that a candidate, an agent, an auditor, or a political party is required to keep separate records respecting foreign

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[34] 1970-72 Can. Stat. ch. 63, §§ 127(3) and 127(4), as amended by 1974-76 Can. Stat. ch. 26, § 85(2), 1974-76 Can. Stat. ch. 71, § 9(1), 1984 Can. Stat. ch. 1, § 72(1), and 1985 Can. Stat. ch. 45, § 72.

[35] Chief Electoral Officer, *supra* note 22, at 34.

[36] *Id.* at 12.

[37] *Id.* at 38.

[38] *See* pp. 39-41 of this report.

campaign contributions, and no governmental agency is entrusted with the responsibility of monitoring contributions made by foreign persons or entities to Canadian candidates or parties during an election campaign. However, nonresidents of Canada are prohibited from endeavoring to "induce electors to vote for any candidate at [a Canadian] election."[39]

VI. Auditing Procedures

As has been stated in the leading treatise on Canada's campaign financing laws, "it is in the realm of financial reporting that the Canada Elections Act appears particularly complex to many party workers not familiar with the intricacies of bureaucratic forms and administrative requirements."[40] One of the reasons that the statute is so difficult in this respect is that it contains separate, but intertwined requirements for agents and auditors of national parties, riding associations, and candidates.

Under Canada's federal campaign financing laws, the chief agent of a registered party is required to send a declaration of receipts and an auditor's report to the Chief Electoral Officer within six months of the conclusion of a fiscal period of that party.[41] This return must contain information respecting "the amount of money and the commercial value of goods and services provided for the use of the party" and the names of individuals and entities that contributed more than a hundred dollars or more than a hundred dollars worth of goods and services during the relevant period.[42]

The Canadian campaign financing system also requires the chief agent of a registered party to file a statement of expenses and an auditor's report with the Chief Electoral Officer within six months of an election.[43] In preparing these reports, the party's chief agent and its auditor will normally refer to the bills of particulars that agents are required to employ for the purpose of recording all of their expenditures in excess of $25.[44]

Within four months of an election, all official agents appointed by candidates must file a "return respecting election expenses" and an auditor's report listing all of their expenditures and all of the contributions they received.[45] Also required to be included on this form are the identities of all individuals and entities that contributed more than $100 or more than $100 worth of goods and services to their candidate's campaign. Candidates, themselves, are obliged to file a separate

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[39] R.S.C. ch. E-2, § 265 (1985).

[40] J. Boyer, *Money and Message* 85 (1983).

[41] R.S.C. ch. E-2, § 44(1) (1985).

[42] *Id.* § 44(2).

[43] *Id* § 46.

[44] *Id.* § 36(2).

[45] *Id.* § 228.

"declaration respecting election expenses" within the same time-frame.[46] This requirement seems to have been included in an effort to impress upon candidates that they can be held personally liable for offending Canada's campaign financing laws.

VII. Offenses and Penalties

The Canada Elections Act establishes dozens of offenses that can be committed by failing to follow its campaign financing provisions. Most of these offenses are punishable with a maximum sentence of five years' imprisonment and a fine of $5,000 when tried pursuant to an indictment and a maximum sentence of one years' imprisonment and a fine of $1,000 when tried in summary proceedings.[47] However, some of the Act's offenses are punishable with different penalties. For example, any broadcaster who overcharges a party for a political announcement during an election campaign is liable to a maximum fine of $25,000.[48]

The enforcement of compliance with Canada's campaign financing laws is a responsibility entrusted to a special Commissioner of Canada Elections. In the aftermath of the 1984 general election, the holder of this office investigated over 500 cases launched by allegations of wrongdoing. Among these cases were 18 arising out of allegations of certain candidates exceeding their spending limits, 31 arising out of allegations of false declarations respecting election expenses being filed, 13 arising out of allegations of candidates incurring expenses otherwise than through their official agents, and 2 out of allegations of parties improperly incurring expenses on behalf of a candidate. Those cases resulted in 4, 2, 13, and 0 prosecutions, respectively. Ten of the thirteen candidates prosecuted for exceeding their spending limits in 1984 were convicted.[49]

The Commissioner of Elections is authorized to exercise discretion in deciding whether persons should be prosecuted for offenses committed under the Canada Elections Act. The Commissioner's decision not to prosecute a member of the Cabinet who had improperly received several thousand dollars in campaign contributions and overspent his limit in 1984 led to the eruption of a furor in the House of Commons in 1988.[50] Nevertheless, Canada has never had a major political scandal arise out of its federal campaign financing laws.

VIII. Proposals for Change

During the hearings conducted by the Royal Commission on Electoral Reform and Party Financing, chairman Pierre Lortie stated his belief that "the current Elections Act is too rigid and

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[46] *Id.* § 230(1).

[47] *Id.* § 267. The distinction between indictable and summary offenses in Canada is similar to the distinction between felonies and misdemeanors in the United States.

[48] *Id.* § 321.

[49] Chief Electoral Officer, *Statutory Report, 1986*, at 7-9 (1986).

[50] XVIII *Ottawa Letter* 57 (1988).

needs to be modernized."[51] In the following paragraphs, a number of the areas in which the Commission is almost certain to recommend major changes will be identified.

A. Third-Party Advertising

The Canada Elections Act provides that any person, "other than a candidate, official agent,... a registered agent of a registered party acting within the scope of his authority or any other person acting on behalf of a registered party" or candidate, who incurs election expenses during an election campaign is guilty of an offense.[52] This section was largely intended to prohibit third parties from engaging in election advertising, but it was held to be an unconstitutional infringement of the right of free expression set out in the Canadian Charter of Rights and Freedom by an Alberta court in 1984.[53] Instead of appealing this decision, the Chief Electoral Officer announced that he would not seek to enforce Canada's Gag Law in 1988.[54] Consequently, during the general election of 1988, opponents and proponents of the Canada-United States Free Trade Agreement were able to spend considerable sums of money on advertisements. Since the Progressive Conservatives were quite clearly lined up against the Liberals and New Democrats on this issue, third-party advertising during the 1988 general election was highly partisan. In 1989, the Chief Electoral Officer called for a resolution of this problem.[55] The chances that this can be accomplished are greatly enhanced by a provision in the Canadian Charter of Rights and Freedoms that allows the courts to interpret the rights and freedoms it guarantees as being subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[56]

B. Limits and Restrictions on Campaign Contributions

The Royal Commission on Electoral Reform and Party Financing has been studying the questions of whether foreign campaign contributions should be prohibited and whether contributions from corporations, trade unions, and business associations should be forbidden or sharply limited in the same ways that they are under a number of provincial election laws.[57] Since considerable support for proposals along these lines has already been expressed, it seems highly likely that they will find their way into the Commission's final report.

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[51] Canadian Press, Nov. 15, 1989.

[52] R.S.C. ch. E-2, § 259(1).

[53] *National Citizens' Coalition Inc. v. Attorney General of Canada, 32 Alta. Rep. (2d) 249 (Q.B.).*

[54] XVIII *Ottawa Letter* 524 (1988).

[55] XIX *Ottawa Letter* 129 (1989).

[56] Constitution Act, 1982, Sched. B, § 1, R.S.C. No. 44 (App. 1985).

[57] *See*, for example, the Election Finances Act, 1986 Ont. Stat. ch. 33 and the Act to Govern the Financing of Political Parties, Que. Rev. Stat. ch. F-2 (1977), as amended.

C. Creation of a Canada Elections Enforcement Commission

In 1987 the Government introduced a bill to reform the Canada Elections Act in the House of Commons.[58] One objective of this bill was to assign the investigative and prosecutorial functions presently divided between the Royal Canadian Mounted Police and Elections Canada to a new Canada Elections Enforcement Commission. Although Bill C-79 was never passed, its major measures have not been abandoned.

D. Reporting of Donations to Riding Associations

In addition to the above change, Bill C-79 would have required the disclosure of the identities of persons and entities who have contributed in excess of $100 to riding associations. The absence of such a requirement in the present Canada Elections Act is widely viewed as a loophole that has allowed local party organizations to amass large funds without having to reveal their sources.

E. Expansion of the Expenditure Limits

A Liberal Party spokesman has recommended that the current limits on campaign spending be raised and expanded to cover such personal expenses as travel costs.[59] Because the current law does contain anomalies in these areas, this suggestion may well prove to be very attractive.

F. Expansion of the Campaign Financing Laws to Cover the Party Nomination Process

The current Canadian system provides for federal funding of election campaigns. Government funds are not available for persons who wish to launch a campaign for the leadership of their party or to become their party's candidate in a general election or by-election. Since these steps are also integral parts of the electoral process, some experts on Canada's electoral system believe that the Federal Government should provide some assistance to persons attempting to enter or assume an extremely important role in the political arena. Their arguments may be proving to be persuasive as it has been reported that Chairman Lortie has "hinted that [his Royal] Commission might recommend the Canada Elections Act be extended to cover the party nomination process."[60]

IX. Conclusion

As has been seen, the Canadian system for financing federal election campaigns is quite complex. Therefore, it is not surprising that a number of problems in this system have come to light in recent years. However, in focusing on some of these current shortcomings, it is important to remember that the roles the Federal Government has assumed in partially funding election campaigns and limiting campaign expenditures have come to be widely accepted. In fact, there

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[58] Bill C-79, 33d Parl. 2d Sess.

[59] Canadian Press, Sept. 19, 1990.

[60] Canadian Press, Nov. 27, 1990.

seems to be considerable sentiment in favor of some expansion of these roles through the work of the ongoing Royal Commission on Election Reform and Party Finance.

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GERMANY

I. Introduction - The Political Framework

German campaign financing law has been developed in West Germany since the 1950s as part of the broader issue of funding the political parties. With the German unification of 1990, East Germany became a part of the Federal Republic of Germany, and West German law now applies to all of Germany.[1] In fact, the first all-German elections were held on December 2, 1990, on the basis of West German law with only slight modifications for that particular election.[2]

The German system of financing election campaigns provides a high level of governmental funding to the parties, and this has to be understood within the German political framework. Germany is a federated state and a parliamentary democracy. The federal legislature consists of two chambers, and of these only the Federal Diet (*Bundestag*, representative chamber) is elected by direct popular vote; the Federal Council (*Bundesrat*), consists of members of the governments of the *Länder* (constituent states). The Federal Diet is the more important of the two chambers. It enacts legislation, only some of which requires the consent of the Federal Council. In each legislative term of the Federal Diet, the cabinet is appointed by the party or coalition of parties that has obtained a majority of the vote.[3] Consequently, the executive branch of government and the parliamentary majority pursue the same policies. Most bills that are enacted into law are introduced by the cabinet. In Germany, there is less of a tension between the executive and legislative branches of government than is experienced in presidential democracies.[4]

This constitutional framework explains the importance of the political parties as compared to that of the individual candidates. Moreover, the influence of individual members in the Federal Diet is further reduced by the creation of parliamentary groups (*Fraktionen*). Party discipline is enforced within the group: members act in concert and frequently vote *en bloc*.[5] For these

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[1] Einigungsvertrag, (Unification Treaty) signed August 31, 1990, *Bundesgesetzblatt* (BGBl., official law gazette of the Federal Republic of Germany) II, p. 885.

[2] Zehntes Gesetz zur Änderung des Bundeswahlgesetzes, (Tenth Amending Law to the Federal Election Law) October 8, 1990, I BGBl., p. 2141; Änderung der Bekanntmachung des Bundeswahlgesetzes, (Change in the Publication of the Federal Election Law) October 19, 1990, BGBl. I, p. p. 2218.

[3] Arts. 38-63, of the Constitution, i.e., *Grundgesetz für die Bundesrepublik Deutschland* (Basic Law for the Federal Republic of Germany) (GG), May 23, 1949, BGBl., p. 1.The Federal President is not elected by popular vote, and his role is largely ceremonial. *Id.*

[4] A. Heidenheimer and D. Kommers, *The Governments of Germany* 198 (New York, 1975).

[5] *Id.* at 192.

reasons, the parties, and not the candidates or representatives, are the recipients of governmental subsidies and private contributions during election campaigns and at all other times.

Another reason for the German focus on the parties in campaign financing is found in the election system which, in effect, is a proportional representation system that contains some traits of a relative majority in a single constituencies system. In the elections to the Federal Diet, voters cast two ballots: the first elects a constituency candidate, and the second is cast for one of the party lists of candidates. Both the constituency candidates and the list candidates for the indirect seats are nominated by the parties. There are no primaries. One-half of the members of the Federal Diet are the winners of the constituency seats of the first vote. The remaining seats are allocated to the parties in such a manner that each party has a total number of representatives that is proportional to its share of the second vote. Representation in the Federal Diet is limited to parties that win three constituency seats or obtain at least 5 percent of the overall vote from the second ballot.[6] This threshold has been imposed because of the bad experiences with a multiplicity of parties in parliament during the Weimar Republic between the two World Wars.[7]

Since the 1950s, the German political scene has been dominated by the Christian Democratic Union and its Bavarian sister party, the Christian Social Union (CDU/CSU) on the moderate right and the German Social Democratic Party (SPD) on the moderate left. In addition, the Free Democratic Party (FDP) has played *kingmaker* in the forming of coalitions[8]. In the elections since the 1960s, the CDU/CSU has obtained somewhat more than 45 but less than 50 percent of the vote and the Social Democrats a few percentage points less than that. An exception was the election of 1972, when the SPD outpolled the CDU/CSU[9]. From 1969 until 1982, the SPD governed in coalition with the FPD. Since then, the coalition government has been formed by the CDU/CSU and the FDP. The Free Democrats, who usually obtain roughly 10 percent of the vote, is a liberal party within the continental meaning of the term, being committed to free enterprise and individual liberties.[10]

The first all-German election changed little in the relationship between the three major parties. The CDU/CSU obtained 43.8 percent of the vote, and the SPD got 34.5 percent.[11] The SPD's low share of the vote was ascribed to its hesitancy toward unification. The FDP got 11

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[6] Bundeswahlgesetz, (Federal Election Law) repromulgated September 1, 1975, BGBl. I, p. 2325, as amended; G. Smith, *Democracy in Western Germany* 130 (New York, 1979).

[7] H. Jaschke, "Splitterparteien: Indikatoren für unzufriedene Minderheiten," in *Parteien in der Krise* 221 (Köln, 1987)

[8] 1 *World Encyclopedia of Political Systems* 367 (New York, 1983).

[9] H. Döring and Gordon Smith, *Party Government and Political Culture in Western Germany* 180 (New York, 1982).F. Jacobs, *Western European Political Parties* 446 (Harlow, 1989).

[10] *Supra*, note 8.

[11] *Bulletin*, December 19, 1990 (Bonn, Presse- und Informationsamt der Bundesregierung).

percent of the vote, and remained the coalition partner of the CDU/CSU.[12] The real loser of the 1990 elections was the West German Green Party which lost the 43 seats it had held in the previous Federal Diet by failing to meet the 5 percent threshold. The West German Greens got 3.8 percent of the vote. They would have survived in Parliament had they followed the example of the larger parties and joined forces with their East German sister party. In this particular election, parties campaigning only in the West or the East had to meet the 5 percent threshold in the territory in which they were campaigning, whereas parties campaigning in all of Germany had to meet the threshold for the overall vote.[13] The East German Greens with 1.2 percent of the overall vote met that (territorial) threshold and are now represented in the Federal Diet, as is the successor to the former East German Communist Party, (the PDS, Party of Democratic Socialism) which campaigned only in East Germany and obtained 2.4 percent of the overall vote. Various splinter parties on the right and the left collectively obtained less than 5 percent of the vote and none are represented in the Federal Diet.[14]

The major German parties are strong and stable. They are much more than election organizations. They have extensive administrative structures through which they build support and maintain a presence in many areas of public service. The parties are accepted by public opinion as the organizations on which the operation of the political system depends.[15] The role of the parties in forming the political will of the people is expressly guaranteed in the Constitution.[16] The major parties have large dues-paying memberships; and, despite their ideological differences, their policies tend to be pragmatic and middle of the road.[17] Since 1980, dissatisfaction with the established parties has led to the rise of the Green Party[18] and to the creation of various splinter parties, among them the Republican Party on the far right.[19]

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[12] *Frankfurter Allgemeine Zeitung* (FAZ), December 3, 1990, at 1.

[13] *The Washington Post,* December 4, 1990, at A25.

[14] Bulletin, *supra*, note 11.

[15] Döring, *Supra*, note 9, at 157.

[16] Art. 21, GG.

[17] Döring, *Supra,* note 15, at 156.

[18] S. Padgett and T. Bürkett, *Political Parties and Elections in West Germany* 171 (New York, 1986).

[19] Jaschke, *supra*, note 7, at 221 .

II. Government Funding

A. Direct Funding

The current system of public campaign financing was created in 1967, with the enactment of the Law on the Political Parties.[20] This law was occasioned by a 1966 decision of the Federal Constitutional Court[21] which struck down the then-prevailing practice of the Federal Diet of subsidizing the represented parties by allocations in the budget. This had been done since 1959, after a 1958 decision of the Federal Constitutional Court sharply reduced the parties' income by holding that the then-prevailing tax deductibility of private contributions to the parties[22] violated the citizens' rights of equal opportunity to exert political influence.[23] In the 1966 decision, the Court held that the general funding of the established parties through budgetary means was inappropriate, but that it was permissible to make funds available for election campaigns, as long as all parties were given equal opportunity.

Since enactment of the campaign financing provisions in 1967, the law has been frequently changed. A major reform was carried out in 1984, after a commission of experts studied various abuses, among them tax evasion by private contributors, influence peddling, and the spendthrift habits of the parties.[24] The last reform in 1988 was again occasioned by a 1986 decision of the Constitutional Court.[25] Throughout the intensive debate on governmental campaign financing, the problem has been viewed in relation to the general issue of party financing and the role of private contributions. On the whole, more equality of opportunity was provided, more accountability was demanded, and the size of the subsidy was increased, while insisting that it had to be matched by the overall non-governmental income of the parties.

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[20] Gesetz über die politischen Parteien (Law on the Political Parties) July 24, 1976, BGBl. I, p. 773, last repromulgated March 3, 1989, BGBl. I, p. 327.

[21] Bundesverfassungsgericht (BVerfG) decision, July 19, 1966, 20 *Entscheidungen des Bundesverfassungsgerichts* (BVerfGE) 56 (1966).

[22] Up to 10 % of income or 2 % of turnover [§ 10b, Einkommensteuergesetz 1955, December 21, 1954, BGBl. I, at 441].

[23] BVerfG decision, June 24, 1958, 8 BVerfGE 51.

[24] *Bericht zur Neuordnung der Parteienfinanzierung, Bundesanzeiger* , May 26, 1983; H. Schneider, "The new German system of party funding," in *Comparative Political Finance in the 1980s,* at 220 (Cambridge, 1989).

[25] BVerfG decision, July 14, 1986, 73 BVerfGE 40 (1987).

The Party Law grants funding for the elections to the Federal Diet.[26] However, since 1979, the same level of funding has been provided for the elections to the European Parliament.[27] In addition, the *länder* compensate the parties for the *land* elections in accordance with the Federal principles.

According to the current federal provisions, reimbursement is granted to the parties that campaigned in the election, provided that they met a threshold of 0.5 percent of the second vote, or polled at least 10 percent of the first votes cast in a constituency if no regional list of the party had been accepted in the particular *land*. This threshold has been deliberately set low so as to encourage small parties.

The allocation of the funds is primarily based on the election result. To compensate for the campaign costs, an amount of 5 Deutsche Mark (DM)[28] (U.S. $3.30) for each person entitled to vote[29] is appropriated [30]. This amount is allocated to the parties in proportion to the results of the second ballot. For parties campaigning only regionally (without a *Land* list of candidates), the compensation is 5 DM for every vote obtained in the district where a 10 percent share of the vote is reached.

In addition to the result-based allocation as described above, a base amount is granted to each party that attained at least 2 percent of the second vote. The base amount for each qualifying party is 6 percent of the total appropriation. However, the base amount of a party may not exceed 80 percent of its result-based entitlement. The base amount was introduced in 1989, and its purpose is to recompense the parties for their continuous costs of addressing the voters, irrespective of the results.[31]

The determination of the compensation is made by the Speaker of the Federal Diet upon application by the party which must be made within two months of the beginning of the new legislative term. However, the entire payment is not made after the election: parties that met the prerequisites for compensation in the previous election may apply for advance payment in the second, third and last year of the four-year legislative term. The yearly advance payment may not exceed 20 percent of the compensation granted in the last election. However, if a legislative term

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[26] Party Law, §§ 18-22.

[27] *Europawahlgesetz,* § 28 (European Election Law) June 16, 1978, BGBl. I, p. 709, as amended.

[28] The DM is currently valued at US. $0.66.

[29] Registration is carried out by the local authorities in such a manner that all those entitled to vote are registered: sec. 14, *Bundeswahlordnung,* (Federal Election Regulation) August 28, 1985, BGBl. I, p. 1769, as amended.

[30] In 1990, 60,436,560 persons were entitled to vote: *Bulletin, supra* note 11.

[31] *Juristen Zeitung. Gesetzgebungsdienst* 15 (1989).

is terminated before the end of the scheduled four year period, the Speaker of the Federal Diet may increase the advances but not beyond 60 percent of the previous entitlement. Advance payments must be refunded to the extent that they exceed the actual entitlement in the election for which they were granted.

Very few conditions and limitations are attached to the receipt of the funds. The most serious of these is a limitation of the public election compensation to the total income of the party from other sources over a four-year period that is counted backward from the second calendar year following the granting of compensation. This rule, enacted in 1984, is based on the philosophy that the parties may not be preponderantly funded by the government.[32] Another important restriction is the withholding of payment until the party has lived up to its requirement of submitting annual statements of account.

Although § 18 of the Party Law grants compensation only for the "necessary expenditures of an appropriate election campaign," no limits on campaign expenditures have been imposed, nor is compensation based on the actual expenditures. The parties do not apply for compensation on an itemized basis and are instead awarded the flat grants described above. A 1968 decision of the Constitutional Court[33] upheld this mode of payment through a generous definition of campaign expenses. The court reasoned that the long-term planning of the parties, the formulation of their policies and the analyses on which they are based are all legitimate campaign expenses from the very beginning of the new legislative term. Therefore, it may be safely assumed that the parties spend more on elections than they receive from public funds. Moreover, insistence on the itemization of the actual costs would intrude on the constitutional liberties of the parties. Although the decision is to some extent superseded by the requirement of rendering public accounts of campaign expenditures that was imposed on the parties in 1984, compensation is still determined by the flat grant method.

B. Indirect Funding

1. In general

Election campaigns are subsidized indirectly through grants given to the political foundations of the parties, through the tax deductibility of contributions and membership dues, and through equalization payments granted to parties to adjust for the different level of tax relief that benefits them due to the differences in the amount of dues and contributions income in relationship to a party's strength. The only benefit in kind that is granted to the parties at election time is a limited amount of free advertising time in the public broadcast media. Transportation to the polls is not subsidized; publications and programs to encourage voting are subsidized indirectly through grants to the political foundations.

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[32] *Bericht, supra* note 24, at 190.

[33] BVerfG decision, July 17, 1968,24 BVerfGE 300.

2. Political Foundations

The granting of public funds to the four civic foundations that are closely associated with the four largest political parties (i.e., CDU, CSU, SPD, and FDP) is a long-standing practice. These foundations operate research institutions, publish extensively, grant stipends to scholars, and hold seminars and civic education courses.[34] The foundations receive block grants from the federal budgets; their amount is somewhat proportional to the representation of the related political party in the Federal Diet. The block grants are quite large; in 1987, they totalled almost 112 million DM (U.S. $73.9 million). In addition, subsidies are granted for specific activities [35]. The constitutionality of this practice, challenged by the Green Party, was affirmed by the Federal Constitutional Court in 1986, provided the funds are granted to subsidize civic education and provided that the foundations live up to certain criteria of responsibility, accountability, and independence[36].

3. Tax deductibility

The tax deductibility of political contributions has been the most controversial issue in the German discussion on party financing. German tax rates have always been high and restrictions on deductibility always had serious effects for the parties. In the 1970s, when the deductibility of party contributions of both individuals and corporate taxpayers was limited to 1,800 DM per year, tax evasions took on scandalous proportions, and this led to a reform of the tax laws in 1984 which allowed deductibility of up to 5 percent of annual income or 0.2 percent of annual turnover,[37] so as to lawfully encourage the private funding of the parties.[38] This income-related tax deductibility was held to be unconstitutional in a 1986 decision of the Federal Constitutional Court, because it violated the equal right of the citizens to influence the political process. The court, however, allowed that the setting of a fixed maximum, which was not to exceed 100,000 DM per taxpayer per year, was permissible.[39]

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[34] K. Nassmacher, "Impact of public subsidies in four countries," *in Comparative Political Finance,* [*supra* note 24, at 245].

[35] *Bundeshaushaltsplan für das Jahr 1989*, title 684-05 (Bonn, 1989).

[36] BVerFG decision of July 14, 1986, 73 BVerfGE 1 (1987).

[37] E. Littman, *Das Einkommensteuerrecht* 1458 (Stuttgart, 1985).

[38] Schneider, supra note 24, at 226.

[39] BVerfGE, *supra* note 25.

On the basis of this decision, the tax laws were again reformed,[40] and currently the deductibility of contributions and membership dues to political parties is limited, for both individual and corporate taxpayers, to 60,000 DM (U.S. $40,000) per year (for spouses filing jointly, the limit is doubled). For contributions to one party in excess of 40,000 DM (U.S. $26,400) per year, the deductibility is denied if the party did not live up to its requirement to disclose the donation in its annual statement of accounts.

4. The equalization payment

The equalization of opportunity payment[41] was introduced in 1984 and slightly reformed in 1988. The payment aims at equalizing (i.e., compensating for) the advantage enjoyed by parties which have a relatively high income from membership dues and contributions and thereby receive more of an indirect subsidy through tax deductibility.[42] The annual payment is granted to all but one of the parties who have polled at least 0.5 percent of the second vote in the last election. The party with the most advantageous level of dues and contributions income does not receive a payment. Instead, it becomes the yardstick party against which the extent of the disadvantage of the other parties is admeasured and compensated. The formula for the payment is based on the relationship between the dues income and the number of members[43] as well as on the relationship between the contributions income and the number of second votes.[44] The equalization payment may not exceed 10 percent of the public campaign compensation earned by the party in the last election. The payment is not counted as governmental funding for purposes of limiting governmental campaign financing to 50 percent of the overall income.

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[40] Fünftes Gesetz zur Änderung des Parteiengesetzes, (Fifth Amending Law to the Party Law) December 22, 1988, BGBl. I, p. 2615 amending § 10b of the Income Tax Law and § 9, no. 3 of the Corporation Tax Law; H. Schleder, "Fünftes Gesetz zur Änderung des Parteiengesetzes, 42 *Der Betrieb* 293 (1989).

[41] Party Law, § 22a.

[42] *Bundestag Drucksache* 11/2007.

[43] Membership dues are based on income.

[44] In 1986, the CDU was the" most-favored party" and therefore received no equalization payment. The SPD, FDP, CSU, and the Greens received payments ranging from 1.4 million DM (CSU) to 5.9 million DM (Green Party. Of the unrepresented splinter parties, only the NDP (National Democratic Party) earned an equalization payment; the others had a high level of contributions as compared to their political strength [*Bundestag, supra* note 42].

5. Free Broadcast Time

Free advertising time during election campaigns is granted by the public television and radio broadcasters.[45] The number of advertisements, as well as the length and time of broadcasts are determined by the public radio and television stations, according to principles worked out by agreements between the broadcasters and representatives of the major parties. The number and time of advertisements is determined in proportion to the previous election results. In practice, free advertisements are not a very sizeable benefit. The advertisements are short (150 seconds), only a few of them are alloted, and these only shortly before the election. During the 1990 campaign, the CDU was alloted 8 spots per broadcaster. Paid advertisements are not permitted by the public broadcasters.[46] The private broadcasters, on the other hand, who also must make appropriate time available to the parties for campaign advertisements, can and do demand the payment of a cost-covering fee.[47] Of greater importance than advertising in the broadcast media is the wide-spread practice of discussing political issues in informational broadcasts, interviews and debates. On such occasions the broadcaster's constitutional freedom of reporting is limited to some extent by an obligation to represent the plurality of opinion in a balanced manner and by the right of the parties to be given a chance to express their views.[48]

III. Non-Governmental Funding by Residents

Resident individuals and legal entities can make contributions to political parties at any time and in unlimited amounts. Contributions to individual candidates are neither customary nor permissible. Not allowed are contributions by political foundations, charitable or benevolent organizations, anonymous donors (for individual contributions in excess of 1,000 DM), the channeling of contributions through trade associations, and contributions made under the expectancy of a political or economic advantage.[49] These prohibitions were enacted in 1984, in response to the then-prevailing abuses.[50]

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[45] Interstate Agreement on the Establishment of the Public Corporation *Zweites Deutsches Fernsehen,* art. 6, June 6, 1961, reprinted in *Broadcasting Laws* 88 (Bonn, 1989); Law Establishing the *Westdeutscher Rundfunk Köln,* in the version of November 1, 1988, as amended [*id.* at 52].

[46] C. von Mannstein, "Was Wahlwerbung wirklich leisten kann," FAZ November 17, 1990, at 13.

[47] Broadcasting Law of North-Rhine-Westphalia, art. 19, January 19, 1987, as reprinted in *Broadcasting Laws, supra,* note 45.

[48] R. Bolwin, "Besteht ein Rechtsanspruch der politischen Parteien," *in* 21 *Archiv für Presserecht* 165 (1990).

[49] Party Law, § 25.

[50] Schneider, *supra* note 24.

IV. Regulation of Foreign Contributions

Aside from a few exceptions, the parties may not accept contributions made from abroad. The purpose of this prohibition, which was enacted in 1984, is two-fold: in addition to forestalling foreign influence on the parties, the rule also aims at keeping domestic contributors honest by preventing them from channelling funds through foreign conveyors in order to avoid tax liability or disclosure.[51]

Contributions from abroad are permitted if they flow from the assets of a German citizen or of an enterprise owned to more than 50 percent by Germans. Also permitted are contributions made by a foreign party represented in the European Parliament or made by a parliamentary group or individual member of the European Parliament. Contributions from abroad that are made by an alien may not exceed DM 1,000 (U.S. $666). Unlawful contributions, both foreign and domestic, must be immediately forwarded to the Speaker of the Federal Diet.[52]

V. Accountability

Although the 1949 Constitution requires the parties to disclose the sources of their funds, a statutory regulation of this duty was first made in the Party Law of 1967.[53] A requirement to account for expenditures and assets was only enacted in 1984. The parties must submit annual statements of accounts to the Speaker of the Federal Diet who publishes them as a legislative document. These financial statements must have been certified by a chartered accountant.

The annual reports furnish information on income, expenditures, assets, liabilities, and the net worth of the party at the Federal, *Land*, and district level. In the year following an election (Federal, *Land*, and European), the total campaign expenditures must be shown separately. Within the statements, the information is broken down only into broad categories. An itemization is solely required for large contributions (in excess of 40,000 DM) (U.S.$26,400). These must be listed by amount and the name and address of the donor. A more detailed explanation of the party finances is not made public. The accuracy of the report is only guaranteed through the certifying accountant who has access to all relevant information and documentation.[54] In comparison to American standards, the German disclosure requirements and reporting procedures are minimal.[55]

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[51] *Supra* note 32.

[52] *Supra* note 49.

[53] U. Schleth, *Parteifinanzen* 104, (Meisenheim, 1972).

[54] Party law, §§ 23-31.

[55] K. Nassmacher *in Comparative Political Finance* at 263.

VI. Sanctions

Sanctions are not a major feature of the German provisions on campaign and party financing. The public compensation for election campaigns is withheld until the annual statements of account have been submitted. In addition, a penalty of twice the amount of unlawfully received and not forwarded contributions is deducted from the public campaign compensation. This penalty is also applied to improperly used or unreported funds.[56] For the failure to report large donations (in excess of 40,000 DM), the taxpayer is also penalized by denying him tax deductibility for the unreported funds. Taxpayers, of course, are subject to criminal prosecution for tax evasion if they fraudulently claim the deductibility of contributions.[57]

The most spectacular irregularities in party funding occurred in the 1970s, when tax deductibility of private donations was severely limited. German industry found various ways of circumventing this restriction, some of them clearly illegal and others operating at the edge of the law. The most commonly used technique was the channeling of party donations through tax-privileged organizations. In addition, party-affiliated enterprises received sham payments for services never rendered, and these payments were claimed as tax-deductible expenditures by the corporate donors. Business enterprises also gave contributions in kind to the parties by allowing them the use of their facilities and staff.[58] The most prominent of these cases was the Flick affair which implicated major political figures for having accepted donations of dubious legality in return for political favors.[59]

Although some 2,000 cases have been investigated, few have resulted in criminal convictions, and many are still pending and probably will not be terminated before the statutory periods of limitation have expired.[60] In November 1990, one of these cases, the criminal trial against the entrepreneur H. Merkle ended with a warning, a suspended fine, and a mandatory donation to charitable organizations.[61] Public opinion is divided on these criminal cases. Whereas some, notably the Greens, are morally outraged by this wide-spread corruption,[62] a large body of opinion finds many mitigating circumstances or excuses for the perpetrators, among them the complicity of the tax authorities, and unclear rules on the extent to which the conveyors could be

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[56] Party Law, § 23a.

[57] Abgabenordnung (Fiscal Code), § 370, March 11, 1976, BGBl. I, p. 613, as amended.

[58] G. Dannecker, "Strafbarkeit und Strafverfolgung," in *Das Geld der Parteien* 57 (München, 1986).

[59] K. Cerny, *Germany at the Polls* 208 (American Enterprise Institute, 1990).

[60] Dannecker, *supra* note 58, at 60.

[61] FAZ, November 7, 1990.

[62] J. Bellers, *Politische Korruption* 59 (Münster, 1987).

used to make contributions to the parties.[63] The 1984 reform has eliminated conveyor financing by forbidding party contributions by tax-exempt organizations while at the same time increasing the limits of tax-deductibility for individuals and entities.

VII. Conclusion

In Germany, the public financing of elections campaigns was enacted as a constitutionally permissible alternative to the general funding of the parties through public subsidies. Yet critics contend that the current system actually amounts to public funding of the parties on a continuous basis.[64] In fact, the established German parties have enacted as much of a public campaign subsidy as the Constitutional Court would tolerate. However, the generous financing of election campaigns has not resulted in a petrification of the party structure, as the emergence of the Green Party has shown. Also, a limit on public campaign funding has been imposed by insisting that the flat grants through which campaign expenditures are compensated must be matched by the private income of the party within the preceding four year period.

The tax deductibility of contributions and membership dues is viewed as an important encouragement of the private funding of the parties. Yet, tax deductibility has been limited to 60,000 DM per donor so as to preserve some modicum of equality among the taxpayers. The subsidy effect accruing to the parties from tax deductibility is recognized to such an extent that parties are given an annual payment to make up for the difference in the benefits they receive from deductibility. According to some scholars, this equalization payment may constitute an unconstitutional redistribution of contributions.[65]

On the whole, there is a strong feeling that public campaign financing is needed to allow the parties to carry out their constitutionally guaranteed functions, even though the democratic ideal would be a funding of the parties through small contributions and membership dues. Devising a constitutionally viable system of campaign and party financing has proven to be a lengthy and arduous process. It remains yet to be seen, whether the last reform has struck a lasting balance.[66]

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[63] FAZ, *supra* note 61.

[64] P. Badura, *Staatsrecht* 188 (München, 1986).

[65] *Id.*

[66] J. Isensee and P. Kirchhof, *Handbuch des Staatsrechts* 140 (Heidelberg, 1987).

GREAT BRITAIN

I. Introduction

A. System of Elections [1]

A voter at a British general election casts a ballot for a candidate to the House of Commons--the lower, but more powerful elected chamber of Parliament. For the purposes of elections, the country is divided into roughly equal-strength constituencies, each returning one member to the Commons. The leader of the political party winning the majority of seats in the Commons becomes the Prime Minister and forms the government from among the members of both Houses of Parliament.

The jurisdictions within the United Kingdom are represented in the following strengths: 523 constituencies for England, 38 for Wales, 72 for Scotland and 17 for Northern Ireland. On account of the increase in the size and movement of population, twenty-two constituencies have been created since 1945.[2]

A feature of the single-member constituency system is the absence of nationally elected officials. The leaders of a political party also stand only as local candidates in their individual constituencies. Unlike the system in the United States where a voter at a general election casts a ballot for a presidential candidate as well as for Members of Congress for his district, a British voter casts a single ballot for his local Member of Parliament.

Election franchise extends to all British, Irish and Commonwealth citizens over 18 who are resident in the United Kingdom. The names of eligible voters are compiled on the basis of residence on October 10th in the year before the register comes into force. Government studies have shown that the register is error prone.[3] But, nonetheless, the turnout at an election is generally high. Between 1950 and 1987, the year of the last general election, the number of those on the register who vote declined from 84 to 75.3%, but a third of the decline is attributable to errors in the register.

Another feature which may have an impact on the financing of elections is the uncertainty of the date of election. An election must be held every five years, but the Prime Minister has the right to choose an election date any time within that period. Parliament is frequently dissolved prior to the full-term in order to gain advantage of an opportune political moment for the party

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[1] The report deals only with national elections, not with local government elections.

[2] The constituencies are drawn up by four Boundary Commissions under the Parliamentary Constituencies Act, 1986, ch. 56.

[3] In the 1980s there were about five million errors; roughly 2 1/2 million names omitted and an equal number of redundant names included: As stated in a letter to the writer from Dr. Pinto-Duschinsky of Brunel University, referring to his study of the register published for the Home Office in 1987.

in power. There is a short schedule set for holding elections under a timetable provided by statute.[4] This too has the effect of restricting campaign spending.

B. History of Election Financing

M. Pinto-Duschinsky, a political scientist who has studied the system extensively, traces the evolution of British political finances into three broad categories.[5] The aristocratic era (to 1883) is noted for bribery and the treating of voters through gifts and favors, the high costs of elections and the practice of buying seats in the Commons.[6] The bribing of voters was outlawed in 1854. The plutocratic era began with the enactment of the Corrupt and Illegal Practices (Prevention) Act, 1883, placing a strict limit on election expenses. The statute saw an immediate decline in election spending.[7] Its provisions prohibiting expenditure without written permission of a candidate or his legally appointed agent, limiting total expenditure, and requiring disclosure and accounting have been carried into the modern era.

The success of the 1883 law is due in particular to the agency provision prohibiting expenditures on behalf of candidates. "The act avoided the type of situation that has existed in the United States, where expenditure limits have been evaded by the multiplication of supposedly independent campaign committees."[8]

II. Government Funding

A. Direct Funding

There is no direct government funding of election campaigns. However, the issue whether the campaigns should be state subsidized has been debated a number of times. In 1976 a government-appointed committee recommended in its majority report that the parties should be partially reimbursed for the expense of conducting parliamentary elections.[9] The report reasoned that since effective political parties form the crux of democratic government, if they fail through lack of resources, democracy itself would fail. The minority was concerned that direct state aid

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[4] Representation of the People Act, 1983, (RPA), ch. 2, Sched. 1, rule 1. In each of the last two elections, the polling day was only 31 days after the announcement of the election.

[5] M. Pinto-Duschinsky, *British Political Finance, 1830-1980* 15 (1981).

[6] In the election in 1880, the declared expenses of candidates were £1.7m. with an estimate of total campaign costs of a then staggering amount of £2.5m [*Id.* at 27].

[7] In 1885, the declared expenses of all candidates totalled £1.02m but in 1886 they dropped to just over £624,000 [*Id.*].

[8] Pinto-Duschinsky, *supra* note 3, at 15.

[9] Great Britain, *Report of the Committee on Financial Aid to Political Parties*, Cmnd. 5, No. 6601 (1976).

would breach an established practice under which organizing for political ends is a strictly voluntary activity in Britain.

The majority report was criticized by the Conservative party and in the media. The Labour party expressed support and is committed to the implementation of the measures suggested in the report. The rationale against state funding is perhaps better expressed by a writer who argues against it on deep moral considerations and inquires:

> It is (sic) right that a Labour taxpayer should have to finance the Conservative party, and vice-versa? Or that Afro-Asian taxpayers should be obliged to subsidize parties advocating the repatriation of coloured citizens? Above all, does not the notion of state subsidies run counter to the voluntary nature of politics in the United Kingdom? There is no obligation (such as exists in Australia) to vote at an election; why should one be obliged to make, via taxation, political contributions?[10]

Still, the case for a direct subsidy is stated to have sufficient merit on grounds that the public interest is not served by the dependence of the political parties on non-governmental funding. In a 1981 report of the Hansard Society, it was argued, *inter alia*, that the relationships between the leading parties and their financial sources--the Conservatives depending on businesses and Labour on the trade unions--militated against popular participation in politics.[11] It was submitted that such institutional support discouraged individuals from getting involved. Thus the Labour party was "able to accept a decline in individual membership with equanimity because it could rely upon funds from the unions."[12] Among the other points raised by the Society in favor of a state subsidy were that the present system handicaps the smaller parties which do not have strong financing sources, and gives certain groups an excessive weight in policy-making and the selection of candidates.

A one-time government subsidy for campaigning was granted during a referendum in 1975 on the question of Britain's membership of the European Economic Community (EEC). Both the pro-EEC and anti-EEC groups were paid a subsidy of £125,000 each.[13] The payments were made

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[10] G. Alderman, *British Elections: Myth and Reality* 57 (1978). Pinto-Duschinsky, *supra* note 3, at 8, pointing to the difficulties encountered in Canada, Germany, Austria and Italy, refers to "the dubious success of subsidies outside Britain."

[11] Hansard Society for Parliamentary Government, *Paying for Politics: The Report of the Commission upon the Financing of Political Parties* (1981). The report is analyzed in K. Ewing, *The Funding of Political Parties in Britain* 132-133 (1987).

[12] *Id.* at 30.

[13] D. Butler, *British General Elections since 1945* 80 (1989).

to redress the overwhelming financial advantage enjoyed by those in favor of joining the Community.

The various political groups represented in the European Parliament were granted an EEC subsidy beginning in 1979. The subsidy was provided to prepare an information campaign and for reimbursing election expenditure. British political parties received such subsidies in the 1979 and 1984 elections to the European Parliament.[14] However, since the money was allotted only to groups which were already represented in the Assembly, the measure proved controversial. In *Les Verts - Parti Ecologiste v. European Parliament*,[15] the European Court of Justice held the subsidies to be void.

B. Indirect Funding

The indirect funding of elections by the government is generally made through the functioning of the election machinery and the free use of government facilities. Candidates are entitled to the free use of rooms in schools or other publicly maintained facilities for purposes of holding election meetings.[16] Candidates need only defray the costs of heating, lighting and cleaning the room.

1. The hiring of public vehicles for conveying voters to and from polls is prohibited. Contravention of this is an offense of illegal hiring.[17] It is an illegal practice to knowingly make any payment for the purpose of conveying electors or proxies to or from the poll. These provisions do not prevent electors from hiring a carriage at their joint cost.

2. A parliamentary candidate is entitled to send, free of postal charges, one of the following:

> (a) an unaddressed election communication not exceeding 60 grams in weight to each delivery point in the constituency, or
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> (b) one communication addressed to each elector.[18]

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[14] Ewing, *supra* note 9, at 122.

[15] [1986] ECR 1339, [1987] 2 CMLR 343; [1988] ECR 1017, [1989] 2 CMLR 880.

[16] RPA 1983, § 95 & Sched. 5.

[17] *Id.* §§ 101-103.

[18] *Id.* § 91(1), as substituted by the Representation of the People Act, 1985, ch. 50, Sched. 4, Part II. The privilege has also been extended to candidates for election to the European Parliament [European Parliamentary Elections Regulations, 1986, 1986 S.I. No. 2209].

In 1983, the cost to the government was £7.8m. for 77.7 million communications,[19] and in 1987 the free postal services probably cost around £10m.[20]

3. Paid political advertisements are not accepted by the broadcast media in Britain.[21] However, an indirect subsidy is granted to the political parties in the form of free election broadcasts on the radio and television networks, both during election campaigns and at other times. The allocation of time between the parties is made by a Committee on Party Political Broadcasts, consisting of representatives of the parties, the British Broadcasting Corporation and the Independent Broadcasting Authority. The allocation is based on factors, such as the votes received by the parties at the previous general election and the strength of the parties when the election is called.

In 1983, the Conservative and Labour parties were allowed five ten-minute broadcasts and the Social Democratic and Liberal Alliance was allocated four five-minute broadcasts.[22] Smaller parties fielding more than fifty candidates were allowed one ten-minute broadcast each. The ten-minute segments cannot be broken up into several shorter broadcasts.

In the 1987 election, the three major parties were each allocated five ten-minute broadcasts on television and seven ten-minute segments on the radio.[23] The actual value of these broadcasts is hard to estimate since there is no commercial advertising allowed on the channels run by the BBC. The value of the broadcasts to the parties is limited because of the requirement that they be made in large ten-minute segments. Thus, the Conservatives voluntarily renounced five minutes of each broadcast. Pinto-Duschinsky believes that in 1987 each party had a subsidy of £7m. for the broadcasts, excluding radio.[24]

In *Grieve v. Douglas-Home*,[25] the leader of the Conservative Party was the candidate in a Scottish constituency. The BBC and Independent Television produced party political broadcasts in which he appeared on behalf of the Party. The expenses of the broadcast were not authorized by his agent nor were they included in his return of expenses. An unsuccessful candidate sought to have his election declared void. The court upheld the election on grounds that the broadcasts

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[19] Ewing, *supra* note 9, at 105.

[20] Butler, *supra* note 10, at 80.

[21] Broadcasting Act, 1981, ch. 68, Sched. 2, rule 8, Cable and Broadcasting Act, 1984, ch. 46, § 12.

[22] I. Crewe & M. Harrop, eds., *Political Communications: The General Election Campaign of 1987* 183 (1990).

[23] Butler, *supra* note 11, at 99.

[24] Crewe & Harrop, eds. *supra* note 18, at 26.

[25] [1965] *Scots Law Times* 186.

were not made to promote the election of the candidate himself but were organized for the information of the public.

4. There are no income tax benefits provided for individual contributions made to the political parties. It is considered doubtful that tax incentives would be sufficient to provide a predictable level of donations.[26] The author also submits that since there is high unemployment in Britain, tax incentives would not benefit parties which represent the economically underprivileged electors.

Gifts made to political parties, however, are exempt from inheritance tax.[27] The exemption is only available to parties which had two members elected to the Commons in the last election or if only one member was elected the candidates of the party must have received no less than 150,000 votes.

5. Until 1918, candidates at an election incurred the cost of voter registration and the conduct of the ballot. Since then the state has undertaken the entire responsibility. The expenses of returning officers are payable out of the Consolidated Fund of the United Kingdom and the expenses of registration are paid by local government.[28] In 1987 more than £25m were claimed as expenses by the returning officers, and £28.5m was spent on the preparation of the annual election register.[29]

III. Non-Governmental Funding

There are no limits placed on the election expenditure of political parties, either nationally or in a constituency. However, it is understood that during the period of a campaign, all local party expenditure is likely to be counted as an expense for the party's parliamentary candidate. Contributions from other sources are not restricted. Thus, organizations promoting the views of a political party may conduct a parallel campaign but without supporting a specific candidate.[30] Yet, campaign costs remain relatively low. In the 1987 elections, the central organizations of the political parties spent the following amounts nationally:

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[26] Ewing, *supra* note 9, at 139.

[27] Inheritance Tax Act, 1984, ch. 51, § 24.

[28] RPA 1983, §§ 29 & 54.

[29] Butler, *supra* note 11, at 80.

[30] H. Alexander, *Political Finance Regulation In International Perspective* 18 (1979).

	Conservative	Labour	Liberal/Alliance
(In £)	9m	4.2m	1.8m[31]

These figures are issued voluntarily since there is no legal requirement for the parties to declare their expenditure. Corporations are, however, required to disclose their political donations in excess of £200.[32] The name of the party or individual to which the donation is made must be stated in the annual report of the directors. The right to donate funds belongs to the directors of a company and not its shareholders, and in practice those who object generally have no option except to sell their shares in protest. To remedy this, several bills have been introduced which would require a company to seek an approving resolution from shareholders before making a political donation. No such measure has been successful.

Trade unions are also required to disclose their political contributions, and a union which has a political fund must hold a ballot every ten-years at which the majority must approve the fund.[33] A political fund must be kept separate, and its liabilities must not be discharged from other assets of the union. A member cannot be compelled to contribute to the political fund.

There are no limitations placed on individual contributions to political parties or candidates. Restrictions on the expenditure of candidates at an election, as introduced in 1883, constitute the major regulation of campaign financing in Britain. Currently, the Representation of the People Act, 1983,[34] restricts a candidate's election expenses in a borough (urban) constituency to £3,648, with an additional 3.1 pence for every name on the election register, and for a county (rural) constituency to £3,648, with an additional 4.1 pence for each name.[35]

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[31] Butler, *supra* note 11, at 79, adapted from M. Pinto-Duschinsky, *supra* note 3 . According to a respected publication, such low level of spending shows that the cost of elections "is small beer in Britain. The three main political parties spent less on their campaigns in the [1983] general election than did a single unsuccessful candidate for the governorship of the state of Texas" [*The Economist,* April 12, 1986].

[32] Companies Act, 1985, ch. 6, § 235 & Sched. 7, para. 3.

[33] Trade Union Act, 1984, ch. 49, §§ 12, *et seq.*

[34] Ch. 2, as amended by the Representation of the People (Variation of Limits of Candidates' Election Expenses) Order, 1989, 1989 S.I. No. 634.

[35] The Representation of the People Act, 1989, ch. 28, § 6, increased the limit for by-election (special election) expenses in a county constituency to £14,592, plus 16.4 pence for each name on the register, and in a borough constituency to £14,592, with an additional 12.4 pence for each such entry. The increase was made in recognition of the fact that by-elections are no longer normal local campaigns, but that they are used as tests of national opinion: [Home Office, *Candidates' Election Expenses: Consultation Paper,* para. 10 (1989)].

The effect of these restrictions may be judged from the low average expenditure incurred per candidate of each major party in 1987:

	Conservative	Labour	Liberal/Alliance
(In £)	4,400	3,900	3,400.[36]

Overall, in fact, the political parties underspent the maximum amounts allowed. The Conservative Party spent 78.3% of the allowable total, while the Labour Party and the Alliance spent 70.9% and 60.7% respectively.[37] Out of the total expenditure of £7.9m at the constituency level, 82% was spent on printing and stationery. Most of this money is raised locally with little assistance from the central organization of the parties.

The expenditure limits are enforced through the law of agency, prohibiting the payment of election expenses by a candidate or on his behalf except by or through the candidate's election agent.[38] The agent is obliged to file a return of the expenses incurred along with sworn declarations of the agent and the candidate.[39] If an agent or a candidate knowingly makes a false declaration, he is guilty of an offense of corrupt practice. A person who knowingly provides money for any expenses incurred in excess of the maximum amount allowed is guilty of an illegal payment.[40]

In *Re Bedwellty Constituency Parliamentary Election, ex p. Finch*,[41] a candidate relied on an inexperienced election agent to calculate the maximum amount he was allowed to spend. The agent overspent the amount by miscalculating the size of the electorate. It was held that the overspending should be excused as arising from inadvertence.[42]

In *R. v. Tronoh Mines, Ltd*[43], during a general election campaign, a corporation issued an advertisement condemning the Labour Party. The company was charged with unlawfully incurring expenses in order to procure the election of a candidate other than the Labour candidate in the

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[36] Butler, *supra* note 11, at 79.

[37] Johnstone, Pattie & Johnstone, "The Impact of Constituency Spending on the Result of the 1987 British General Election," 8 *Electoral Studies* 143, at 145 (1989).

[38] RPA, 1983, § 73.

[39] *Id.* § 82.

[40] *Id.* § 112.

[41] 63 *Local Government Reports 406* (1965).

[42] Inadvertence, accidental miscalculation and similar causes not arising from want of good faith may be used as a defense against charges of illegal practices [RPA, 1983, § 167].

[43] [1952] 1 All E.R. 697.

constituency in which the company had its office. The court accepted the submission of the defense that the prohibition of election expenditure without the authority of an election agent and the limitation on spending did not prohibit expenditure on general political propaganda which incidentally assisted a particular candidate among others.

A candidate may himself pay any personal expenses not exceeding £600 incurred by him on account of the election.[44] Any personal expenses in excess of that amount must be paid by the election agent.

IV. Foreign Campaign Contributions

No specific regulation exists for campaign contributions received from foreign sources. In fact, the Companies Act, 1985, requiring the disclosure of political donations by corporations specifically exempts from disclosure any company which has subsidiaries which have donated funds but is not itself the wholly owned subsidiary of a company incorporated in Great Britain. This provision thus allows the channeling of political funds through British subsidiaries. While there are instances of donations by foreign corporations, it was once stated that "foreign companies ... usually fight shy of such commitments."[45] There is no information available of any substantial change.

V. Auditing and Inspection of Returns

There are no formal requirements for the auditing of returns of expenses incurred. Returns must be submitted to returning officers within thirty-five days after the result of the election is declared.[46] The returning officers are required to publish newspaper notices, and individual notices to all election agents in the constituency, stating the place and time at which the returns can be inspected.[47] The returns must also be available for inspection by the public for two years.[48]

The contents of a return may be questioned in an election petition presented by any elector or candidate.[49] The petition is tried before an election court consisting of two high court judges.[50]

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[44] RPA, 1983, § 74.

[45] *The Economist,* October 6, 1984, at 64.

[46] RPA, 1983, § 81.

[47] *Id.* § 88.

[48] *Id.* § 89.

[49] *Id.* § 121.

[50] *Id.* § 123.

VI. Penalties for Irregularities[51]

Among the offenses applicable to irregularities committed in campaign financing are:

- incurring election expenses otherwise than through the candidate's election agent is an illegal practice;
- making a false declaration as to election expenses is a corrupt practice; and
- incurring election expenses in excess of the maximum limit is an illegal practice.

The election of a candidate found guilty of a corrupt or illegal practice will be voided. Further, a person who is found to be guilty of a corrupt practice will be barred from being a candidate for between seven to ten years. An offense of illegal practice bars a person from becoming a candidate during the Parliament for which the election was held.

In addition, a person guilty of a corrupt practice is liable on conviction on indictment to imprisonment for up to one year and a fine, or both. A conviction for a illegal practice is punishable by a fine.

VII. Conclusion

Britain has been largely successful in keeping campaign expenditures at relatively low levels. The chief feature of the regulation, an imposition of a strict ceiling on the election spending of candidates, has ensured that Britain is the only country that has managed to effectively control the costs of elections.[52] Laws in other countries that limit spending, it is suggested, can be short circuited by expenditure on behalf of the candidates. "These loopholes hardly exist in Britain because legislation makes it illegal for anyone to spend on a candidate's behalf unless specifically authorized by the candidate or his election agent."[53]

This success, however, must be viewed in light of some drawbacks of the system. It prevents electors from independently campaigning for a candidate--which may be an infringement

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[51] As provided in various sections of the RPA, 1983.

[52] A. Heidenheimer, "Major Modes of Raising, Spending, and Controlling Political Funds during and between Election Campaigns," in *Comparative Political Finance: The Financing of Party Organizations and Election Campaigns* 14 (1970), cited in Pinto-Duschinsky, *supra* note 3, at 268.

[53] *Id.* The same author notes, however, that while campaign financing does not pose a serious problem of the involvement of vested financing of politics, there are other disturbing aspects of the problem. Many organizations are able to purchase political influence in Britain not by contributions to a campaign or to a political party, but by payments for outside employment and sponsorship to incumbent members of Parliament [*Id.* at 238-239].

of free speech and may limit the participation of the public in an election campaign.[54] The ceiling on spending only applies at the local constituency level, leaving the national organizations of the political parties to pump unregulated amounts into candidate-non-specific campaigns. The constituency expenditure is, therefore, deceptive; and, national expenditure does not give the whole picture because the parties are not obliged to publish audited accounts. The accounts that are released show that national expenditure of the parties increased by 65% between 1983 and 1987. There is some suggestion that this growth is depriving the local party organizations of their traditional role in organizing their electorate. Nonetheless, the limited spending at the constituency level cannot be dismissed as lacking in impact on the distribution of votes.[55]

A consultation paper issued recently by the government mentions the anomaly of strictly controlling individual campaigns while placing no control on national campaigning. According to the paper, however, to introduce such controls would make it unavoidable to give the political parties statutory backing which has so far been avoided.[56] The further questions that would have to be addressed are whether there should be a national maximum for each party and how that amount is to be arrived at, who would operate such controls and what would be the sanction for transgressing them. The period for consultation set in the paper has expired but no further development has been noted.

So far Britain has not allowed direct subsidies to political parties and campaign financing, considering them contradictory to its basic notion of political organization as being a voluntary activity. The inequity of compelling taxpayers to support political causes to which they may be opposed is also cited in disallowing state subsidies. The case for subsidies is also weakened in that the parties are allowed free broadcasting.

The system of regulation in Britain can be described as relatively uncluttered by details, and its simplicity may account for the general absence of cases in which the system is seriously breached. A comparatist reasons that the number of cases in the United States involving breach of campaign financing laws are brought about by the weakness of the American political parties which forces political candidates "to raise a large proportion of their campaign funds almost entirely on their own."[57] Being thus dependent on large-scale sources of finance outside the parties, it is not surprising to the author that some candidates, increasingly caught up in complicated reporting requirements, fall foul of the law. Whereas, "it is not that British politicians

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[54] *Id.*

[55] Johnstone, Pattie & Johnstone, *supra* note 32, at 153.

[56] *Supra* note 35, para 11.

[57] A. King, "Sex, Money, and Power," *in* R. Hodder-Williams & J. Ceaser, eds., *Politics in Britain and the United States.*

are better than American politician at resisting the temptation to break campaign-finance laws; it is simply that the temptations themselves hardly exist in Britain."[58]

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[58] *Id.* at 191.

GREECE

I. Introduction

Greece became a parliamentary republic very early, acquiring its first Constitution in 1844. According to the Constitution of 1975/1986, Greece is a Presidential Parliamentary Republic. The main legislative branch is the VOULE, the Parliament, which is unicameral and consists of 300 deputies. (The Constitution requires no fewer than 200 nor more than 300.) Up to one-twentieth of all representatives--presently only twelve deputies--are elected by the entire country. The leader of the party with the majority of seats in the Parliament is appointed Prime Minister, and the President of the Republic is elected every five years by a two-thirds majority of the Parliament.[1]

The main participants in the parliamentary elections are the political parties, whose freedom to organize and function is guaranteed by the Constitution.[2] Since the end of the civil war in 1949 and the 1950 election when a plethora of small parties achieved representation in the Parliament, the number of parties has been reduced. Between 1946 and 1964, nine elections took place in which more than thirty parties participated. Despite the proliferation of small parties, three major political organizations have persisted in Greece covering the right, center and left of the political spectrum.[3] In 1974, seven years of military rule ended, democracy was restored, and a referendum decided against reinstating the monarchy. In the same year, PASOK (Panhellenic Socialist Movement), a new party with a strong organizational structure based on a mass membership emerged.

The political party system in Greece is characterized by its fluidity, and defections based on ideological differences, personality clashes and party splits are usual phenomena. On the other hand, with the exception of the Communist Party, a clear identification with the leader of the party rather than the party agenda is obvious.

The Constitution allows the Parliament to decide on the electoral law. On March 31, 1989, Parliament passed the latest electoral law which includes provisions for a simple proportional representation.[4] It has been described as "the fairest, most proportional and most representative electoral system Greece has ever had."[5]

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[1] E. B. Venizelos, *To Syntagma tes Elladas 1975/1986* [The Constitution of Greece, 1975/1986] 41 (Thessaloniki, 1986).

[2] *Id.* at 33.

[3] Richard Clogg, *Parties and Elections in Greece* 211 (North Carolina, 1987).

[4] Law 1847/1989 as later codified by Presidential Decree 265/May 18-19, 1989.

[5] It would be the twelfth electoral system in 20 parliamentary elections since 1926 [Panayote Ellias Demetras, "Greece", *Electoral Studies* vol. 8, no 3, (December 1989)].

Under the present law, all parties participate in the first distribution of votes.[6] In the second distribution, all parties and coalitions may participate with the exception of independent candidates or the coalition of independent candidates. The third distribution was abolished. The preferential vote for the selection of parliamentary deputies, which is called *the cross* in Greece, was again reinstated.[7] Voters have the right to put a reference cross next to the name of the preferred candidate in the party list.

The system of reinforced proportional representation that has been in force intermittently since 1951 and continuously since 1958 has resulted in a systematic over-representation of the larger parties and under representation of the smaller ones.[8] More than any other member of the EEC, Greece is a country where governments have been manipulating the electoral laws to advance their own political ambitions and purposes.[9]

The April 8, 1990, elections were the third to be held within a year, the two previous elections having been held on June 18 and November 5, 1989, with inconclusive results. In the last elections, the New Democracy party, led by Constantinos Mitsotakis gained a sufficient plurality to form a government. The results of the April 8, 1990, elections in which 77.4 percent of the registered voters went to the polls, and of the previous two elections, were as follows:[10]

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[6] In the first distribution the 288 seats in the 56 electoral districts are allocated according to Hagenbach-Bischoff quota (which is the quotient of the total number of valid votes by the number of seats plus one). In the second distribution, the unallocated seats from the first distribution are given to the parties in accordance with the Hare quota (which is the quotient of the total number of unused votes by the number of unallocated seats). Any remaining seats are distributed one each to the party that has the highest number of still unused votes. Under the system of reinforced proportional representation--a system followed in most post-war elections--after the first distribution, all votes were used to allocate seats among parties which were able to meet a limit, such as the 17% share of the votes nationwide in 1974, 1977 and 1981 [*See supra* note 5].

[7] The Pasok government had abolished the preferential vote in 1982 as a step to suppress clientelistic ties [Y. Papadopoulos, "Parties, the State and Society in Greece: Continuity within Change" 2 *West European Politics* (April 1989)].

[8] P. Vegleris, "Greek Electoral Law" 35 in *Greece at the Polls, The National Elections of 1974 and 1977.*

[9] R. Clegg, *Supra* note 3.

[10] *Greece: The Week in Review*, Embassy of Greece, Press and Information Office (Washington DC, April 10, 1990).

Results of the 1989 and 1990 General Elections

Parties	April 90	November 89	June 89
	% Seats	% Seats	% Seats
New Democracy	46.88 (150)	46.19 (148)	44.25 (145)
PASOK	38.62 (123)	40.67 (128)	39.15 (125)
Left & Progress Coalition	10.28 (19)	10.97 (21)	13.12 (28)

In addition to the three major parties--New Democracy, the Panhellenic Socialist Movement (PASOK) and the Coalition of the Left and Progress--an additional twenty-seven parties, two coalitions and sixteen combinations of independent candidates had officially declared their participation in the elections.

II. Government Funding

A. Direct Funding

The Constitution of 1975, article 29, paragraph. 2, states that financial assistance to the parties by the State and the disclosure of campaign expenditures by parties and candidates may be provided by law.[11] On the basis of this provision, the Greek Parliament in 1984, following a twenty-five year trend in other European democracies, enacted law 1443 on Financial Assistance to Political Parties[12] in order to provide supplementary public subsidies to the parties to cover their operational and campaign expenditures, to reduce significantly the influence of private funding, minimize corruption and promote the freedom and independence of parties. The financial assistance is granted for every parliamentary period and for each year separately. The total amount of money granted for this purpose is 0.001 percent of the total amount of the State budget.[13] Each parliamentary period commences the year after the elections were held and terminates in the year new elections will be held.

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[11] E. B. Venizelos, *Supra* note 1.

[12] P. Raptarchis, 1A *Diarkes Kodix Nomothesias* (Continuous Compilation of Laws) 194,21 (Athens, loose-leaf).

[13] The sum of 900 million drachmae (about U.S. $6 million) was allotted to be shared for campaign spending by the parties contesting the elections. The sums of two billion and one billion drachmae (about U.S. $14 million and U.S. $7 million respectively) were allotted in the previous two elections held in 1989. [*Greece, the Week in Review,* Embassy of Greece, Press and Information Office (April 10, 1990)].

All political parties that participated in the last parliamentary elections either: 1.) independently, received three percent of the total valid votes with a list of candidates in at least two-thirds of the electoral districts; or 2.) in coalition with other parties with a list of candidates in two-thirds of the electoral districts and received at least five percent of the total valid votes in the case of a coalition of two parties, and six percent in case of coalition of three or more parties are eligible for public subsidies. The determination that parties meet the above conditions is made by a committee in accordance with Presidential Decree 895/1981.

There is no provision for state funding of parties that participate in the European Parliamentary election but not in the Greek Parliamentary election. There was some debate as to whether those parties should receive state funds. The majority voted against it, invoking *inter alia*, the argument that the Constitution provides only for funding for national elections.[14]

The state subsidy is allocated to the political parties by a decision of the Minister of Interior in the following fashion:[15]

- Ten percent of the amount determined as above is distributed equally among all political parties which participated in the immediately prior parliamentary elections and are entitled to state funds.

- The remainder is distributed among the same parties in proportion to the number of valid votes received in the last parliamentary elections. For this purpose, the amount to be distributed is divided by the total number of valid votes of all parties entitled to it. The quotient is the basis for determining the amount of financing, which is determined by multiplying the number of valid votes by the quotient.

- in case of a coalition of political parties, the amount is divided by agreement among all parties which formed the coalition. The parties have until the end of the year in which the election was held to notify the Minister of the Interior as to the agreement. In the absence of any agreement, the amount is distributed equally among the parties which formed the coalition.

III. Restriction on Public Funding

The funds granted are not transferable. The funds are granted free of any tax or fee. The use of funds is limited exclusively to operational and campaign expenses. The obligation of the parties to use the public funds exclusively for those purposes should not be considered as a step to restrict the freedom of parties, since those funds are part of the taxpayers' money and they are entitled to know in what fashion the parties spend it.

The law enumerates as operational and campaign expenses any amount spent for the rent, and furnishing of offices and electoral centers; for the purchase, publication and dissemination

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[14] G. Papadopoulos, *He Chrematodotese ton Politikon Kommaton os Provlema tes Demokratias* [Financing of Political Parties as a Problem in Democracy 127 (Thessaloniki, 1989)].

[15] Law 1443/1984, art. 3.

of any printed materials used to advance their political messages; and for the rent of any means of transportation used by candidates.[16]

The parties entitled to public funds are obliged to publish, in the first trimester of each year in at least two daily newspapers in Athens, a balance sheet which must include information on income including: the amount of public subsidy; annual membership; contributions of friends of the party; income accrued from movable or immovable property, loans or donations, dividends, interest on shares; and any other income accrued from other activities determined by the by-laws of the party. The balance sheet must also include any operational expenses including office rental, staff expenses, expenses for publication of newspapers and other printed materials as well as any other expenses accrued in the campaign.

B. Indirect Funding

1. Transportation

Voting is mandatory in Greece. Only voters over seventy years old and those whose residence is more than 200 kilometers from the polls are excluded from voting.[17] Voter turnout is always big because voting is largely perceived as a civic duty rather than a legal requirement. The State does not subsidize transportation to the polls. The political parties have the discretion to allocate money to be used for transportation and appeal especially to those voters whose residence is more than 200 kilometers distant and who would not otherwise be inclined to vote. A common practice in all elections is that the parties make block-bookings of airline flights in an effort to encourage their supporters living abroad to return to Greece to vote, since Greeks living abroad do not have the right to vote in their embassies.[18] Additionally, parties distribute tickets for transportation by ferry boat to those distant supporters who might not otherwise vote.

2. Broadcasting

In the past, the amount of television coverage of the parties with representation in the parliament was an issue unilaterally decided by the government. In all previous campaigns the opposition parties have complained strongly against the abuse of the state-controlled media.

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[16] Id., art. 4, ¶2.

[17] Presidential Decree 1123/1981.

[18] Only Greeks who live permanently or happen to be in member states of the European Economic Community may exercise their right to vote in the European Elections in their respective embassies or consular offices by virtue of law 1427/1984. [P. Raptarhis, 1A *Diarkes Kodix Nomothesias* (Continuous Compilation of Laws) 152,28(b) (Athens, looseleaf)].

At present,[19] in regards to the "covering of the pre-election Period," only political parties and not candidates can transmit advertising spots. These spots must not exceed one minute, must be limited to one-third of the total weekly time allocated to each party and can be transmitted only between programs. Advertising spots are broadcast free of charge. Identification of the party or its representative must be very clear.

The basis for allocation of time among political parties is the strength of the party in the previously dissolved Parliament. The three largest parties in the previous Parliament are entitled to at least thirty-eight minutes weekly for televised programs. The transfer of television time from one week to another is permitted, if the total amount of time does not exceed fifty minutes. Smaller parties with members in the previous Parliament are entitled to eight minutes weekly. Parties with no representation in the Parliament but with a list of candidates in seventy-five percent of the electoral districts are entitled to only five minutes weekly. In addition to the above allotted time, each large party is entitled to one forty-five minute broadcast.

This Special Regulation also includes provisions for private broadcasting stations. Those stations should invite persons suggested by the largest parties for interviews or debates. This must be done on an equal basis. Every private station is obliged to transmit the same number of spots per party as the public station at no charge. Those spots must be transmitted at the same time of the day for each party.

3. Subsidies and Incentives

In Greece, private contributions are not tax-exempt. This is against the principle of equality. Such tax exemptions mean that the wealthy individuals or corporations which contribute large sums of money are at an advantageous position and benefit preferential treatment. In addition, during the parliamentary debate tax credits or exemptions for private contributions were perceived as unconstitutional, infringement on the equality of all citizens and the principle of equal opportunities for all parties.[20]

4. Promotion of Voting

The parties have the discretion to use a certain amount of public funds in order to encourage voting.

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[19] Special Regulation No. 149/1990 on the National Committee on Radio and Television 313 *Kodikas Nomikou Vematos* (KNV) (Code of Legal Tribunal) vol. 38, issue 2.

[20] G. Papadopoulos, *supra* note 14.

III. Non-Governmental Funding

A. Prohibitions and Limitations

Financial assistance to political parties by the public sector as well as by any legal persons of public law[21] and organizations of local self government is prohibited irrespective of the amount of contribution.

The law does not set an upper limit on the amount contributed by individuals. Only if the amount exceeds 200,000 drachmae (about $1,225), must the name of the contributors be clearly stated. The Law does not set an upper limit on the amount of campaign expenditures spent, even though there was a consensus by all parties, during the discussions in the Parliament on the Constitution of 1975 and during parliamentary debates on the issue of financing of the parties by the State to include an upper limit.

B. Foreign Sources of Funds

During the parliamentary debate on the above law, both government and opposition emphasized the detrimental effects of foreign financing of parties on both democracy and the free and independent activities of the parties. Specifically, a ban on financing of the parties by foreign governments was requested. The above law does not contain a specific prohibition against funding from foreign individuals. Financing of political parties by parties or organizations of other European Community member states was found to be morally and politically acceptable because such financing is free of any conditions and its is granted for campaign expenditures for the elections to the European Parliament.[22]

IV. Reporting and Auditing Procedures

Memberships, casual contributions to the party, and financial assistance provided by the friends of the party are reported anonymously. However, individuals or legal entities which contribute more than 200,000 drachmae (about U.S. $1,225) on a yearly basis must be specified by name. The parties are obliged to publish their balance sheets within the first trimester of every year in at least two daily newspapers in Athens. A copy of the balance sheet and copies of the newspapers which published the balance sheet must be forwarded to the President of the Parliament and the Minister of the Interior. Additionally, all parties who participated in the last parliamentary elections must publish their campaign expenditures within the first trimester of the following year in at least two different daily newspapers in Athens.

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[21] Art. 5, para. 4(a), under Greek law, there is a distinction between legal persons or corporations of private and public law. Legal persons of public law are established by the State for the promotion of public, governmental or quasi-governmental purposes. They include, for example, public utilities and educational insitutions. Those legal persons of private law are regulated by private law and are established for a private purpose either profit or non-profit.

[22] G. Papadopoulos, *supra* note 14.

All candidates who participated in the last parliamentary elections are obliged to submit to the Speaker of the Parliament, within fifteen days after the election, an analytical list of their campaign expenditures along with documentation.[23] In addition, every candidate is obliged to publish a summary of his campaign expenditures in two newspapers of his electoral district. The preparation and the timely submission and publication of the list of expenses are subject to supervision by the Speaker of the Parliament. In the elections that were held in 1989, a large number of candidates failed to comply with the requirement of publishing their campaign expenditures in two newspapers of their electoral districts. Out of 300 deputies elected, only 200 complied with the requirement, after the deadline was passed, usually without documentation and only after repeated requests of the Speaker of the Parliament.[24]

According to article 5 of the Law, the preparation and timely publication of the balance sheet is subject to examination by the Speaker of the Parliament. The audit is done by a committee composed of representatives of all parties in the Parliament. The number of members in the committee depends on the strength of parties in the Parliament. The Chairman of the Committee is the Speaker of the Parliament. The audit must be done within three months after the balance sheet was published. The committee prepares a report with its findings and submits it to the Speaker of the Parliament and to the Minister of Interior.

The two largest parties, New Democracy (right wing) and PASOK (socialists) agreed on the necessity of an audit during the parliamentary debate. The Communist Party did not vote for it on the grounds that disclosure of sources of financing and reporting of contributions beyond a certain amount would lead to persecution of those persons during times of political instability and social unrest.[25]

The audit is performed in two stages. Initially, the Speaker of the Parliament ensures that the balance sheet is prepared and published within the time limit set by law. The second stage includes the substantial audit performed by the Committee. In practice, however, one year after the law was published, the duties of the committee were reduced to a ceremonial level. On the basis of decision 35509/1985,[26] the Minister of the Interior decided that the function of the Committee would be limited to a superficial examination of the revenues and expenses of the parties without an in-depth examination or monitoring of the documentation accompanying the balance sheet. Only recently, because of the public outcry and criticism, the Minister of the Interior[27] restored the substantial audit by the Committee by stating explicitly that the audit includes the examination of any necessary documents.

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[23] Law 1847/1989, art, 7, paras. 1 and 2.

[24] G. Papadopulos, *supra* note 14.

[25] *Id.*

[26] Raptarchis, *supra* note 12, at 194,25.

[27] Minister of the Interior, Decision 22444/90, 38 *Kodikas Nomikou Vematos* [Code of Legal Tribune] 462.

V. Penalties for Irregularities

Violations regarding the timely publication of the balance sheet of the parties, the prohibition of financing by the public sector or enterprises of public law, or the publication of campaign expenditures or in case of improper preparation of the balance sheet, are punishable by interruption of state financing for one year. Such a penalty is imposed by the Speaker of the Parliament. He notifies the party and the Minister of the Interior for implementation.

Additional and more severe penalties are imposed in case of violating the prohibition of financing by the public sector or enterprises of public law or organizations of local self-government. The law calls for imprisonment according to provisions of the Criminal Code.

VI. Conclusion

Undoubtedly, the issue of campaign financing is a complex one. Campaign financing from government funds, or from private sources only, involves intricate and serious problems. Financing exclusively or to a large extent by the government is incompatible with the independent and socially autonomous nature of the political parties. On the other hand, campaign funding strictly from private sources is also considered as a major threat to the freedom of parties and a practice that may lead to corruption and dependency. In an effort to balance these two aspects of campaign financing, the Greek Parliament enacted the Law on Financial Assistance to Political Parties that provides for supplemental direct funding to assist the parties in their operational and campaign expenditures.

The significant provisions of the law were its linking state funding with auditing procedures and penalties in the case of irregularities, the disclosure of contributions beyond a certain amount, the disclosure of campaign expenses by both candidates and parties, and the probibition on public-sector contributions to parties.

The lawmakers failed to include a prohibition on financing from foreign individuals, organizations and foreign governments despite the strong arguments in favor of it. They declined also to include an upper limit on campaign expenditures and an upper limit on funding from private sources. If the contribution, however, exceeds a certain amount, the contributor must be clearly identified.

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INDIA

I. Introduction

A. Political Structure

India has a republican parliamentary system of government. The executive power of the Union of India is vested in the President. In case of vacancy in the office of the President, the Vice-President of India acts for him until a President is elected.[1] The Vice-President is also the ex-officio chairman of the upper house of the Parliament. The Parliament consists of the President and two houses, the Council of States and the House of the People.

The House of the People has 525 members chosen by direct election from territorial constituencies in the states and not more than 20 members to represent the Union Territories.[2] Elections are on the basis of adult suffrage.

The Council of States consists of 12 members who are nominated by the President for their special knowledge or practical experience in respect of such matters as literature, science, art and social service, and 238 members who are elected by the elected members of the state legislative assemblies. The allocation of seats to the states is provided in the Fourth Schedule of the Constitution. The election of the Members of the Council, as well as the election of the President and Vice-President, is in accordance with a system of proportional representation by means of the single transferable vote.

The system of proportional representation by means of the single transferable vote is intended to secure the representation in the elected body of all the groups or interests in the electorate and to avoid the swamping of the elected body by only the representatives of majority party. The meaning of the system is that every voter has only one vote irrespective of the number of seats to be filled. If, for instance, there are five seats to be filled, the voter does not cast five votes but indicates on the ballot five successive preferences, first, second, third and so on.

The total number of valid ballots is then divided by a number which exceeds by one the number of vacancies to be filled. The resulting number obtained, disregarding any fractions, is increased by one. This represents the number of votes sufficient to secure the return of a candidate and is called the quota. Any candidate who secures the first preferences equal to the quota is declared elected. The surplus of his first preferences are then distributed proportionately among the candidates who are marked as second preferences on the ballots on which he has been marked as first preference.

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[1] *Constitution of India* (Const.) art. 65.

[2] Const. art. 81.

If all the seats are not filled by transferring the surplus first preference votes of the candidates who have received more than the quota, the candidate who has obtained the least number of first preferences is eliminated, and the second preferences on the ballot papers in which has been given the first preference are treated as first preferences in favor of the candidates in whose favor such second preferences have been marked.

Thus, there is only one vote for each voter although there may be many seats to be filled. But this single vote is transferred to other candidates, and for this reason it is called the system of the "single transferable vote."

B. Political Parties [3]

India has a multi-party system. Each registered party is recognized for assignment of election symbols by the Election Commission.

The Indian National Congress is the largest party. It won parliamentary majorities in seven of the nine general elections held between 1947 and 1989. Originally founded in 1876, it soon became an organization demanding political rights and economic opportunities for the people. Under the leadership of such figures as Tilak, Gandhi and Nehru, it gradually transformed itself into a political party. In 1929, it demanded freedom for India from British colonial rule. Due to its leadership of the struggle for independence, it has been considered a patriotic and national party.

After attaining independence in 1947, the Congress drafted a democratic constitution for India, a most elaborate document, outlining the political structure of India. The party has helped establish a strong political government in the democratic tradition. Of the nine general elections held to date, the Congress Party has won seven and, thus, the right to rule the country. It is still the largest political party in the country.

The Communist Party of India (CP(I)) was established in 1925. Its early leaders looked to the Soviet Union for guidance. After the outbreak of World War II in 1939, the Congress Party continued the nonviolent struggle for independence, but the Communist Party supported the British who were wartime allies of the Soviet Union. This boomeranged against the party, and the people began considering them traitors and "British stooges." Following the termination of war, the Communist Party membership dropped considerably. At present, the Communist Party controls the provincial government of Bengal, but it is doubtful that they would ever gain a majority in the Indian Parliament.

By the early 1950s, cleavages within the Communist Party of India were apparent, and some members looked to China and its Communist Party rather than to the Soviet Union for inspiration. These members supported China's claims to Indian territory in the Himalayas, and on this issue they split from the Communist Party of India, forming the Communist Party of India-Marxist (CPI(M)).

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[3] S.C. Jha, *Indian Party Politics* (New Delhi 1989).

The Bhartiya Janata Party (BJP) is the fourth oldest party in the country. In fact, it is a new edition of the old Bhartiya Jan Sangh formed in 1951. It is a rightist organization and, unlike some larger parties, it has a strong grassroots base. Composed largely of Hindus, it espouses their cause, as the Muslim League does for the Muslims, and supports a capitalist economy.

The Janata Party (JP) is the youngest political party which entered the Indian political arena in 1977. Its basic purpose, first espoused by the late Jayaprakash (JP) in 1974, was to provide a functional opposition to the ruling Congress which is necessary for a democratic political system. Initially started as a student movement, it finally became a federal party of non-communists and anti-Congress groups. The catalyst for its formation was the 1975 Declaration of Emergency followed by the general elections in 1977. Basically, it promotes socialism.

The DMK-AIADMK are the regional parties of the South Indian State of Tamil Nadu. They are offspring of the protest movement of the lower castes against domination by the upper castes. The Dravida Munnetra Kazhagam (DMK) is the heir of the Dravida Movement in the anti-Brahmin conflict in Madras in the early 20th century. The movement aimed at removing control of the Brahmins at the social level and sought to wean the people away from ritualistic Hinduism. DMK was formed in 1947. Later, the late Chief Minister split from the DMK to establish the All India Dravida Munnetra Kazhagam (AIADMK). The present leader of the AIADMK has links with the Congress while the DMK leadership sides with the JP. The policy of the two regional parties remains the uplifting of the lower castes, industrialization of South India and opposition to the imposition of the Hindi language on the people in the South.

The Akali Dal is a religio-political party in the Punjab State formed in 1920. Its aim is protection of the Sikh rights. Originally, the party was formed to reform and purify the Sikh temple.

The Indian National Congress won triumphantly in 1984 but lost the 1989 general election and a coalition formed the government. The 1984 and 1989 party strength in the parliament was as follows:

Election results[4]

	1984		1989	
	Votes (%)	Seats	Votes (%)	Seats
Congress	48.1	415	40.3	193
Janata Party (84)/ Janata + Dal (89)	6.7	10	18.3	141
Telegu Desam	4.1	30	3.4	2
Congress (S)	1.6	5	0.3	1
DMK	2.3	2	2.4	--
BJP	7.4	2	11.8	86
CP (M)	5.7	22	6.5	32
CP (I)	2.7	6	2.7	12
Others & Ind	21.4	51	14.3	58
	100.0	543	100.0	525

II. Government Funding

A. Direct Funding

There is no system of public financing of candidates or the political parties. Contesting candidates or their political parties must establish and collect their own funds for election purposes.

B. Indirect Funding

Although election expenses have been rising, the government does not subsidize transportation of voters to the polls or publication of materials for election purposes. Candidates are also handicapped by the government's control of broadcast media. They are unable to advertise, and they are not allowed to use the media for their election propaganda. This inability of the opposition to use the powerful television and radio communication media led to their charging the government with taking an unfair advantage of them. They argued that the Congress Party's policies and programs were exclusively propagated and publicized through radio and television under the guise of government information. This led to the opposition demand for equal time and opportunity to air their party programs. In fact, the question of access to radio and television transmissions was raised in the early 1950s. The delay in devising an acceptable formula for all political parties deprived the opposition of the benefits of these media.

A major problem was that each political party, regardless of its size, demanded equal air time. This demand was rejected by the ruling Congress Party because it was the largest party and

[4] D. Butler & P. Jalan, "The Indian Parliamentary Election of 1989," *Electoral Studies* 147 (June 1990).

fielded the largest number of candidates in each election. The suggestion of the Election Commission that each party have one opportunity and the Congress Party two opportunities was rejected by the opposition. Finally, in 1977, the formula conceding the principle of equal time to each recognized party was accepted by all party representatives. Based on the agreement, a Code of Conduct for radio and television transmission evolved.[5] The financial savings to the political parties in terms of the costs of such broadcasts at the time of elections was enormous. Thus, this may be deemed the only indirect funding of political publicity for elections by the government.

The broad clauses of the agreement, which allows only parties (not individual candidates) to air their view at the time of elections, are:

- There would be no criticism of friendly countries;
- no political party would attack another on the basis of religion or community;
- obscene or defamatory language would not be used in these broadcasts;
- there must be no incitement to violence or anything against the maintenance of law and order in the country;
- no attempt would be made through broadcasts to commit contempt of court; and
- no one must cast aspersions against the integrity of the President of India.

Following the agreement, party political broadcasts were first arranged on radio and television during the 1977 state elections, with the order of speaking arranged by drawing lots. At the time of elections, these party broadcasts provide the only free political advertisements on the network.

III. Limitations on Campaign Expenditure

The framers of the Constitution were conscious of the cost involved in election campaigns. They also were aware of the problem of over-spending in elections, for money was considered a big factor in vitiating elections. Soon after gaining independence, when the election law was enacted, many leaders and legislators emphasized the popularity of a candidate and the programs of his party--not so much his wealth or resourcefulness--as the prime factor of his election success, which view has not been upheld by subsequent experience. Therefore, to restrain candidates from incurring high expenditures, they placed a spending ceiling of twenty-five thousand rupees (approximately, then, U.S. $5,000) on each candidate.[6] With the decline in the monetary value of the Indian currency and the consequent inflationary pressures, the cost of conducting and contesting elections has been mounting ever since the first general election in 1952. With the approach of each general election, therefore, this ceiling on the expenditure of a candidate has continued to

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[5] P.C. Chatterji, *Broadcasting in India* 105 (1987).

[6] The Conduct of Election Rules, 1961, rule 90.

be raised. As at present, the limitation is 150,000 rupees (approximately U.S. $7,000). If a candidate exceeds this limitation in spending, he is deemed guilty of a corrupt election practice.[7] He would lose his seat in parliament and possibly be debarred from seeking election for the next six years (in essence he would miss two general elections).[8]

It is conceded by many candidates that the legal ceiling on expenditure has, in practice, no relationship to the real expenditure of a candidate which, generally, is about six times the legal limitation. Therefore, the rule limiting campaign expenditure is observed, rather, more in its breach. Hardly any candidate can aspire to win if his purse is not bigger than the official ceiling. In other ways as well, the legal ceiling may not have much significance because the election of a candidate is defined as the expenditure actually incurred or authorized by him or his election agent.[9] The amount of money that his party, friends, well-wishers or philanthropists, may spend on his election or advertisement is not considered the candidate's expenditure and, thus, is not includable in the ceiling.[10]

In order to verify the expenditure of an election candidate, within thirty days of the declaration of the result, the candidate is required to file, in the prescribed form, a statement of his election expenses with the District Election Officer. This statement is not required to be audited before submission. After the statement is lodged, the officer notifies to enable the public and the interested parties to verify or challenge its correctness.

IV. Non-Government Funding

The establishment of a party fund is of vital interest to each party contesting elections. However, financial assistance or obtaining funds for a party, whether in power or in opposition, poses no problem because each party has its own mode of mobilizing funds. Political contributions for the party fund are raised from a wide range of sources of which industry and trade are believed to be the principal ones.

Direct sources of funds are subscriptions and contributions from members, donations from sympathizers and other interested elements, and periodical collections from the public. Indirect sources of collections, generally, are gifts from foreign agencies in various forms, presentation of purses to party leaders on festive occasions or on their birthdays, and befriending and bullying businessmen.

Advertisements in party newspapers by big businesses, which are willing to pay an exorbitant price for them, is another mode of collections for the fund. Sales of party souvenirs by the Indira Gandhi Congress Party yielded a big amount for that party in 1972. It is believed that the

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[7] The Representation of People Act, No. 43, of 1951, § 123.

[8] *Id.* § 100.

[9] *Id*1. § 77.

[10] Indira Gandhi v. Raj Narain, 1975 A.I.R. (S.C.) 2299.

Congress collected nearly one hundred million rupees (then, about U.S. $10,000,000) through advertisements for a souvenir which never saw the light of day.[11]

Expenditures incurred on parliamentary general elections has been rising since 1952. There is no single explanation for the rapid increase in the cost of campaigns in the last several years. Inflation, devaluation, and adoption of new techniques of campaigning may have contributed to the steep rise in expenses. In the March 1977 election, according to the Central Bureau of Investigation, the Congress party was given one thousand one hundred million rupees by various industries. The Janata party opposition group did not lag far behind in making a sizable collection from businesses.

By far the largest single amount of campaign funds flows out of the business houses and companies. But legal contributions from companies and industrial associations have never accounted for the bulk of political contributions. The major source was the black money private contributions made directly to individual candidates. Despite such campaign contributions, the power and influence of the Indian business community is limited. Black money is made through evasion of taxes on legal source incomes along with incomes from all manner of illegal sources. The dominant place of agriculture, on which the livelihood of three quarters of the Indian population depends, has not allowed industry to gain the same importance and prominence. Moreover, the business sector is too fragmented and insufficiently mobilized to articulate a common set of class interests and values. Therefore, the business community has not been able to forge and present a strong lobby.

The most successful collective business effort in 1967 was made by the cement industry through the formation of a group called the Cement Allocation and Coordinating Organization (CACO). After the decontrol of cement (the allocation and price of which had been in the hands of the government), it was set up for the purpose of distribution of cement but its underlying aim was to ensure that there was no reimposition of controls on cement. The distribution commission that CACO received was used by it to finance candidates who would oppose any attempt by government to reimpose controls on cement. As a result, the Swatantra party and BJP became the main beneficiaries of the CACO financing in the general election.[12]

Unlike the developed countries, business in India did not have a systemized method for political contributions. Still, the business sector has provided campaign financing through companies, individuals and some industrial groups.

Until 1969, companies were not prohibited from making political contributions. Invariably, therefore, the companies amended their memorandum of association to include the power of the board of directors to make political contributions.[13] A company was allowed to contribute not more than twenty-five thousand rupees (then, approximately U.S. $3,000) or five percent of its average

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[11] V.B. Rao, *General Elections in India* 60 (1987).

[12] Kochanek, "Briefcase Politics in India," 37(7) *Asian Survey* 1287 (1987).

[13] A. Ramaiya, *A Guide to the Companies Acts* 408, § 293-A (1966).

net profits, whichever was greater. Political contributions by companies and their adverse impact on the Indian political process were questioned by some eminent jurists who feared that such contributions could throttle democracy in the country.[14] Such criticism led the ruling Congress Party to ban contributions by the companies following which the companies law was suitably amended.[15] Many people believe that the actual cause for the ban was Mrs. Gandhi's disenchantment with the political bosses of her party, popularly called the Syndicate Group who, in fact, had brought her into power in 1966. She resented their control over the collection and distribution of the funds to their proteges and the consequent leverage the Syndicate Group enjoyed.

Banning the company contributions left the Congress coffers empty. It also eliminated the only legal mechanism available to Indian businesses for obtaining access and rendering support to the political parties. In order to control and limit big business, stern measures were taken, and the law against monopolies was enacted.[16] With the disappearance of legal campaign contributions, noted the government Wanchoo Committee, "Black money became the main source of funds for political parties."[17] In fact, many people identified political fund raising as a prime cause of the black income generation. The Chief Election Commissioner, in his 1983 report, commented on the role of such money power in elections in the following terms:

> This malady, I am afraid, during the last decade has assumed alarming proportions. The huge expenditures incurred by candidates and political parties have relationship to the ceiling prescribed under the law. The candidates and their political parties look to big money-bags for their funds to contest elections, thereby adopting a formula which establishes the chances of winning in direct proportion to the money spent. That in the course of time this triggers a chain reaction leading to corruption at various decision-making levels, does not seem to bother them.[18]

Allowing for leakages on route, the report suggested that something like four thousand million rupees (approximately U.S. $203,000,000) had to be generated to assure that seventeen hundred million rupees (approximately U.S. $100,000,000) became available for actual election expenditures.

In 1985, after the assassination of Mrs. Gandhi, Rajiv Gandhi (called Mr. Clean in the Indian press for his anticorruption stance) tried to reverse the process and remove the deleterious effect of black money on the political institutions, but his advisers faced a variety of problems. Resistance to his policies came from every corner, including political leaders, business and labor.

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[14] Kuldip Nayar, "Funding the Elections," *Indian Express* April 18, 1979.

[15] The Companies (Amendment) Act, No. 17, of 1969, § 3.

[16] The Monopolies and Restrictive Trade Practices Act, No. 54 of 1969.

[17] C.S. Pandit, *End of an Era* 113 (New Delhi, Allied Publishers Pvt. Ltd., 1977).

[18] *See* National Institute of Public Finance and Policy Report, *Aspects of the Black Economy in India* 295 (1985).

These forces created a formidable obstacle against any transformation of the system. At any rate, in 1985, the company law was amended again to allow for political contributions by companies.[19]

However, no government company and no other company which has been in existence for less than three financial years is permitted to contribute, directly or indirectly, to any political party or for any political purpose to any person. In any case, the contributions by a company in a single financial year shall not exceed five percent of its average net profits, determined in accordance with the provisions of the companies law, during the three years immediately preceding the financial years. A company donation to a person who it knows to be carrying on activity for public support of a political party shall also be deemed to be a contribution for a political contribution.

In order to limit further the power of the company to make contributions, it is provided that an advertisement by the company on behalf of a political party would be deemed to be a part of the political contribution. Every company making political party contributions is required to make such disclosures in its annual financial statement and give particulars of the total amount contributed and the name of the party or the person receiving it. A contravention of these provisions is punishable with a fine which may extend to three times the amount so contributed. Moreover, every officer of the company who is in default may be punished with imprisonment for a term of up to three years and with a fine.

V. Auditing Procedures

Every company is required to prepare an annual statement of account in the prescribed form which would also represent its profit and loss account. The annual statement and the balance sheet must be signed by the directors for authenticity. Annexed to the balance sheet is the auditor's report stating that having examined the company's books of account for the relevant financial year, they are satisfied that the company balance sheet represents a true and correct state of affairs.[20] This balance sheet shall disclose any campaign contributions that the company had made during the period.

The statement of account which each candidate is required to file with the District Election Officer within thirty days of the declaration of the election result is not subject to an auditor's report. Once the statement has been filed showing the election expenditure incurred, any person may inspect it to verify or challenge its correctness.[21]

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[19] The Companies (Amendment) Act, No. 35, of 1985, § 2.

[20] The Companies Act, No. 1, of 1956, § 216.

[21] The Conduct of Election Rules, 1961, rule 88.

VI. Prohibition on Foreign Contributions

In 1976, the Government enacted a law to regulate the acceptance and utilization of foreign contributions with a view to ensuring that political institutions, associations, academic and other voluntary organizations and individuals might function in a manner consistent with the values of a sovereign democratic republic.[22] No person, association or political group is allowed to receive or accept any foreign contribution. In order to receive or accept such funds, the person must obtain prior permission of the Central Government. Moreover, a candidate for election who receivies any foreign contribution within six months preceding his nomination, is required to give, in the prescribed form, a notice as to the foreign contribution received by him, the purpose for which it was received and the manner of its utilization. A contravention of this provision is punishable with imprisonment for a term which may extend to five years, with a fine, or with both. A person who accepts foreign hospitality in breach of this law may also be imprisoned for a term of three years, or with a fine, or with both. Where, in violation of these provisions, a company is guilty of an offense, every officer of the company who, at the time of the breach, was responsible for the conduct of the company business, shall be deemed guilty of an offense and be liable for punishment accordingly.

VII. Conclusion

The wheels of parliamentary democracy run on popular votes. It is money that lubricates its machinery and excessive use of this money has caused a serious concern. It is believed that the impact of money generally outlives the poll verdict and affects the post-election policies. As long as large contributions are necessary, the possibility of direct or indirect influence of money can be significant. Therefore, if democracy is to be preserved and made meaningful for the masses, attempts should be made to regulate campaign finance. It is unrealistic to place a ceiling on the poll expenditure of individual candidates and not include in the ceiling the expenditure that their party, friends or philanthropists, may incur for them.

Following are suggestions that some Indian commentators have offered for the reform of the election law and the regulation of campaign contributions:[23]

- The Election Commission should raise the amount to be spent by each candidate to a realistic level and take into consideration the rising costs due to inflation.

- The expenses incurred by political parties, friends or well-wishers should be covered by a spending ceiling so as to prevent the abuse of excessive spending.

- Campaign funds of the candidate and his political party should be subject to audits.

- The Election Commission should provide stringent punishment for violations of the campaign fund regulations.

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[22] The Foreign Contribution (Regulation) Act, No. 49, of 1976.

[23] *Supra* note 11, at 60.

• An overall package of political and electoral reforms, in consultation with parties, involving state funding and public audit should be devised.

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ISRAEL

I. Introduction

In Israel the president is the head of state but not the head of government.[1] The Government specifies that the government is the executive authority of the state.[2] The government is headed by the prime minister. After elections to the *Knesset* (the parliament) the president assigns the task of forming a government to the member of the *Knesset* who has notified the president that he is prepared to accept the task. This member is usually the head of the political party which has the most members of the *Knesset*, or the one whose party has been most successful in forming a coalition of several parties.

Israel's electoral system is based on proportional representation. The *Knesset* has 120 members, and parties are often obliged to form coalitions to achieve a majority of 61 members and so form a government. Forming a coalition government requires negotiating an agreement on platform and cabinet positions. In elections to the *Knesset*, each party files a list of candidates and the entire country forms a single constituency. The total number of valid votes cast is divided by the number of seats (120). Any party winning a minimum of one percent of the total vote is guaranteed representation.

In the 1988 election for the 12th *Knesset*, 27 parties ran and 15 of those won seats. No single party won a majority, and the government eventually formed was, as most Israeli governments have been, a coalition. The results of the election were as follows:[3] Likud, 40 Members (hereafter KM); Labor Alignment, 39 KM; Shas, 6 KM; Agudat Yisrael, National Religious Party, Citizens' Rights Movement, 5 KM each; Democratic Front for Peace and Equality, 4 KM; and 8 parties won 1 to 3 seats each.

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[1] *See Basic Law: The President of the State*, 18 *Laws of the State of Israel* (hereafter LSI) 111 (5724 - 1963/64).

[2] 22 LSI 257 (5728-1967/68).

[3] The 1988 Israeli Election, *Israel Fact Sheet* December 1988, at 2; *see also*: A. Diskin, Notes on Recent Elections, The Israeli General Election of 1988 *in* 8 *Electoral Studies, An International Journal*, p. 75 (D. Butler & B. Särlvik, *eds*. 1989).

II. Government Funding

A. Direct Funding

Direct funding of national elections is prescribed by the Political Parties (Financing) Law, 5733-1973 [hereafter Political Parties (Financing) Law, as amended].[4] Section 2 of the law awards the right to be financed to every party group. A *party group* is defined in § 1 as follows:

- A party group which in the elections to the incoming *Knesset* submitted a list of candidates as a party group of the preceding *Knesset* and is represented in the *Knesset* by at least one member.

- A party the representative (or representatives) of which in the *Knesset* has (or have) been recognized as a party group by the *Knesset* House Committee.

- A combination of two or more parties which maintain one party group in the *Knesset*.

Every party group is entitled to financing for: (a) its election expenses during the election period, (b) its running expenses (expenses other than election expenses) for every month from the month following the publication of the results of the elections to the *Knesset* until the month in which the results of the elections to the next *Knesset* are published.[5]

The monies shall be paid out of the Treasury, through the Chairman of the *Knesset*, into a bank account of the party group. The number of the bank account(s) is to be supplied to the Chairman of the *Knesset* within fifteen days after the determining day. The *determining day* is defined in § 1 of the Political Parties (Financing) Law as the "101st day before elections to the *Knesset*, or, in relation to elections held under a law for the dissolution of the *Knesset*, the third day after that law comes into force."

The calculation of government financing is as follows:[6] For election expenses--one financing unit per seat won by the party group in the elections. *Financing Unit* is defined in § 1 of the Political Parties (Financing) Law as an amount established and published in the *Official Gazette* by the Finances Committee of the *Knesset* as a financing unit for purpose of this law. One financing unit was established on November 1, 1988, before that year's election, to be 320,000 New Shekels (approximately $160,000 U.S.). For running expenses--five percent of the amount due to the party group for election expenses.

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[4] 27 LSI 48 (5733-1972/73).

[5] *Id.* §§ 1 & 2(a).

[6] *Id.* § 3.

The issue of whether the unequal amounts paid to party groups contradicted the principle of equality in the election guaranteed by Basic Law (The *Knesset*), § 4[7] was discussed in a leading case, *H.C. 98/69 Bergman v. Minister of Finance*.[8] The Israeli High Court of Justice held that a complete denial of financing to a new political party candidates list indeed contradicted § 4 but that a retroactive payment based on winning at least one seat in the incoming *Knesset* and complying with all the requirements of the law was just.

The funds are paid in the following manner: After the delivery of a certificate by the Chairman of the Central Election Committee to the Chairman of the *Knesset*, certifying that a party group has submitted a candidate list for the next *Knesset*, the party group will be paid an advance on its election expenses. The advance shall be in the amount of sixty percent of one financing unit for each Member who belonged to the party group on the date of submission of the candidates list.[9]

When a party group obtains at least one seat in the elections to the *Knesset*, eighty-five percent of the election expenses should be paid immediately after publication of the election results and fifteen percent immediately after the State Comptroller has submitted a favorable report following audit of the political group.[10] An advance received by a party group shall be deducted from the above payments. Where the advance exceeds the amount due to the party group, the excess shall be deducted from the first payment made to the group for running expenses.

Section 6 of the Political Parties (Financing) Law sets prior conditions for payment of the funds for election expenses and running expenses. To receive government financing, within fifteen days after the determining day (defined above), the party group must have:

- notified the Chairman of the *Knesset* of the names of not fewer than two and not more than eight consenting representatives, at least one of whom is a Member and at least one of whom has been declared by the party group and by himself as being familiar with the party group's financial position.[11]

- submitted to the Chairman of the *Knesset* a declaration signed by its representatives that it has done everything necessary to ensure the proper keeping of an account of its income and expenditures in accordance with the relevant directives of the State Comptroller,[12] in particular,

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[7] 12 LSI 85 (5718-1957/58).

[8] 23 *Piske Din* (Decisions of the Supreme Court) [hereafter PD] 693 (1969) [in Hebrew].

[9] 27 LSI 48 (5733-1972/73), § 4(a), as amended.

[10] *Id.* § 4(b), as amended.

[11] *Id.* § 6(a)(1).

[12] *Id.* § 6(a)(2).

the Directives of Political Parties Financing (Bookkeeping of Accounts of Party Group) 5738-1978.[13]

• notified the Chairman of the *Knesset* of its account number(s) at a bank or banks.[14] The representatives or the bank account numbers may be changed later subject to the notification requirement.

Section 7 of the Law prescribes several limitations on the expenses which a political group is allowed to incur. The limitations apply to all monies, without distinction between those derived from government funding or from other sources. Section 7(a) applies to election expenses while § 7(b) covers running expenses. The limitations on election expenses are as follows:

> The expenses should not exceed the greatest of: (1) two financing units for every Member who belongs to the party group on the determining day; (2) two financing units for every member of the incoming *Knesset* who belongs to the party group; (3) four and a half financing units.

Furthermore, no party should spend for yearly running expenses an amount exceeding four-fifths of the amount due to it for financing its running expenses or the amount due to a party of three Members, whichever amount is greater. Fees paid for use of a line of credit will not be regarded as expenses within § 7 above.[15]

The expenses of a body connected with a party group shall be regarded as election expenses, and so be included in the calculation of the limits on election expenses. The determination of whether a body is connected with a party group or not is to be made by the State Comptroller.[16]

B. Indirect Funding

Israeli political parties get governmental funding indirectly as well as directly.[17] Free transportation is provided for persons entitled to vote but not currently residing near their polling

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[13] 13 *Dinim* (Laws) 5846d/1 (1986-) [in Hebrew].

[14] *Supra* note 4, § 6(a) (3).

[15] A table summarizing the expenditures made by different lists of candidates during the 1988 election campaign based on the State Comptroller's report on campaign financing, *Duah Merakeret Hamedina* (State Comptroller's Report) of September 13, 1990, and December 26, 1990 [in Hebrew] is at the end of this report.

[16] *Supra* note 4, § 1; *see also* § 10(a) Political Parties (Financing) (Amendment No. 5) Law, 5742-1982, 36 LSI 81 (5742-1981/82).

[17] The Political Parties (Financing) Law, 5733-1973, as amended, § 18.

place to the polls or back along such routes and over such distances as the Central Election Committee may prescribe.

The law does not prescribe subsidies to propaganda publications, but it does provide for free broadcasting time. (In Israel, the term *propaganda* lacks the pejorative connotations it has in the United States.)

The Elections (Modes of Propaganda) Law 5719-1959,[18] as amended, § 16(B) provides that broadcasting of election propaganda according to that law will be free. Section 15(B) provides that the Chairman of the Central Election Committee for the *Knesset* shall, after consultation with that Committee and with the Director-General of the Broadcasting Authority, prescribe the times for broadcasting elections propaganda on television, their incorporation into the regular television programming, and the times prescribed for each party and list of candidates. Each of them will be given ten minutes and each party already represented in the outgoing *Knesset* will receive three additional minutes for each Member.

Although the television broadcasting time is free subject to the above regulation, the program itself should be produced and financed by the parties and be approved by the Chairman of the Central Election Committee.

Campaign propaganda by radio is also free subject to § 15 of the law. The Chairman of the *Knesset* will decide after consultation with the Committee the times allotted to each party or list. According to § 15 every party or list will be given twenty-five minutes and every party represented in the outgoing *Knesset*, six minutes for each one of its Members. The Second Channel for TV and Radio Law, 5750-1990,[19] provides that the above provisions of the Elections (Modes of Propaganda) Law, 5719-1959,[20] will apply *mutatis mutandis* to broadcasts made according to the Second Channel for TV and Radio Law, 5750-1990.[21]

The unequal broadcast time allotted to parties and in particular the preference awarded to parties represented in the outgoing *Knesset* again raised the question of equality in the elections, which is guaranteed by § 4 of Basic Law - The *Knesset*[22].

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[18] 13 LSI 146 (5719/1958-59).

[19] Sefer Ha-hukim [Book of Laws-Official Gazette] No. 1304 of February 13, 1990, p. 57 [in Hebrew].

[20] *Supra* note 18.

[21] The "second channel for TV and radio" created by the later law is a semi-government body and subject to the inspection of the State Comptroller. It was empowered to issue franchises to applicants wishing to broadcast.

[22] 12 LSI 85 (5718/1957-58).

In H.C. 246/81, 260/81 *Agudat Derech Eretz et al. v. The Broadcasting Authority et al*[23] the Supreme Court struck down an amendment to the Political Parties (Financing) Law, which had changed the allotment of broadcast time by decreasing the time previously allotted to new lists and increasing that allotted to lists which were already represented in the outgoing *Knesset*. The Court held that the principle of equality stated in the Basic Law: The *Knesset*, when applied in the context of election propaganda, could not be applied literally in a formal mathematical way. The equality required is a substantive one. Justice Barak explained that the starting point of different lists was not uniform: a big list which existed long before the election usually requires more time to explain its agenda, its shortcomings and success. However, a new list does not have such a past record and, therefore, would not need the same amount of time to explain its agenda. To guarantee equal electoral opportunity, each list should be allotted an amount of time which will allow it to present its agenda in a reasonable way to the voters.

The allocation of broadcast time to the different lists should be decided by the Chairman of the Central Election Committee, as said, in accordance with the provisions of the law. The parties are not free to trade television time with radio time since such transactions violate the rule of equality in the election. In the *Knesset* Election Case No. 3/84 *Hashai, Chairman of the Maarach Party Group v. (1) The Likud Party Group (2) Agudat Israel Party Group*,[24] the Supreme Court declared such an agreement as illegal. In the cited case, the second respondent made a deal with the first respondent to exchange television time for radio time, due to religious motives, which prevented its supporters from watching television. Justice Bach held that although the above agreement did not affect the equality between the two respondents, it did affect the structure of the system created by the legislature in order to afford a reasonable and balanced election propaganda. Acquisition of additional television time by one list would undoubtedly affect other lists and the loss of radio time by that list did not balance it out. Furthermore, added the Justice, a green light to such transactions could bring some future unfavorable phenomena with long-term implications for the democratic system of elections.

The question of additional broadcasting time outside of the limits provided by the law was analyzed in another 1984 case, *Knesset* Election Case No. 2/84 *The Likud Party Group et al v. Yahad Party Group*.[25] The petitioners in that case requested an injunction to prevent the respondent from broadcasting election propaganda through the *Peace Ship* privately owned by Aby Nathan and sailing in the Mediterranean Sea. Justice Bach granted the remedy of injunction for two reasons: First, the additional broadcasting time contradicted § 3 of the Election (Modes of Propaganda) Law, 5719-1959[26] which prohibited the use of aircraft and vessels for election propaganda. Second, the additional broadcasting contradicted the basic principle of equality in broadcasting election propaganda which § 15 of the latter law takes into consideration.

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[23] 35(4) PD 1 (1981).

[24] 38(2) PD 721 (5744/45-1984).

[25] 38(2) PD 631 (1984).

[26] *Supra* note 15.

To prevent the possibility of circumventing the time allotments which are prescribed by § 15 of the Elections (Modes of Propaganda) Law, 5719-1959, § 5, of the latter law clearly provides that there shall be no election propaganda by means of cinematographic projection or television other than by the above formula. Furthermore, it provides that events in which candidates for the *Knesset* play a part shall not, during the period of thirty days immediately preceding election day, be projected in any cinema or television unless they are reported as part of the election propaganda broadcast the time and cost of which is awarded by law to the parties. The purpose of the prohibition seems to be to discourage politicians from actions intended to make news in order to be photographed and get free broadcasting time. In H.C. 323/84 *Tsali Reshef v. The Broadcasting Authority*, [27] a decision of the Broadcasting Authority was appealed. The subject of that particular decision was a refusal of the authority to broadcast photographs of a planned demonstration on Israel's involvement in the Lebanon war. Justice Shamgar held that the Court could not replace the decision of the Broadcasting Authority which is the one authorized to make such decisions unless the decision was totally unreasonable. Justice Shamgar did not find such unreasonableness in that case. Justice Levin held that not every event related to the Lebanon war should be within the term *election propaganda*. However, in the circumstances of that particular case it was clear that the demonstration was an event which was political in nature.

Other than by the above ways of indirect funding, there are no other ways such funding could be channeled to the parties. There are also no tax incentives to contributors for the election campaign. Furthermore, the Elections (Modes of Propaganda) Law, 5719-1959, as amended, § 2,[28] prohibits the use, for purpose of election propaganda, of monies of public bodies or corporations in which the government takes part either in the management or in the finance. Similarly, there is a prohibition on use of the land or moveable property of such bodies or corporations. This prohibition does not apply to renting of property which is offered regularly for rent, except for those which were offered by the state to a Minister or a Vice Minister.

C. Encouragement of Voting

Public funds are used directly to encourage voting and explain voting procedures. Sections 16 and 16A of the Elections (Modes of Propaganda) Law 5719-1959 provide that on the fourteenth, the seventh and each of the last two days before election day, and on election day, the chairman of the Central *Knesset* Elections Committee shall publish in all the daily papers appearing in Israel, in the news broadcasts by radio and television and in any such other manner as he may after consultation with that Committee determine, a notice explaining to the voters the procedure of voting and their right to vote freely and in accordance with their conscience and setting out the provisions of law which ensure the freedom, secrecy and cleanness of the elections. The Chairman of the Central Election Committee for the *Knesset* shall coordinate broadcasts under this section with the Minister of the Interior.

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[27] 38(2) PD 586 (1984).

[28] State Comptroller's reports, *Supra* note 15.

III. Non-Governmental Funding

Party groups are prohibited from receiving any contribution directly or indirectly from a corporation (including a registered partnership) in Israel or abroad. *Kibbutzes*[29] and agricultural societies are not regarded as corporations for the purpose of the above prohibition on receipt of contributions, as long as the contributions made by their members are reasonable in the circumstances.

Exceptions to the prohibition on corporate contributions are contributions to a cultural or educational enterprise of a party group or of a body connected with a party group serving a cultural or educational purpose. In the reality of Israeli life, where the major political parties engage in a variety of activities other than campaigning and party business in the *Knesset*, this exemption from the total prohibition is very meaningful. The activities conducted by political parties include publishing, housing projects, recreational facilities, various types of cooperatives, banking and, in the case of religious parties, large educational systems. All the major parties maintain a variety of auxiliary organizations for youth, women and other special groups. In effect, all these activities not only contribute to publicity for the parties involved but also to the dependency of the public on these services. Nevertheless, the amendment of § 8B exempted such contributions from those which are prohibited.[30]

There is no prohibition on the receipt of contributions from individuals. However, an amendment to the Political Parties (Financing) Law[31] prescribed a ceiling to such contributions. According to §§ 8(b) & (c) of the latter law, the limit to a gift from an individual and his relatives living with him is 20,000 New Shekels (approximately U.S. $10,000). In an election year the limit was increased to 40,000 New Shekels (approximately U.S. $20,000). The latter amounts are subject to yearly change according to the consumer price index.

Monies from private contributions (resident as well as foreign) may be spent under the same conditions as monies from government funding.[32]

IV. Regulation of Foreign Campaign Contributions

Israeli law does not limit contributions made by foreign individuals subject to the usual requirement of proper documentation and accounting. It prohibits, though, campaign contributions

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[29] Collective farms.

[30] *See* Political Parties (Financing) (Amendment No. 5) Law, amendment of § 7, 5742-1982, 36 LSI 82 (5742-1981-82).

[31] Hok Mimun Miflagot (Tikun Mispar 10) (Political Parties Financing Law) (Amendment No. 10) 5750-1990, *Sefer Ha-hukim* (Book of Laws-Official Gazette) No. 1309 of March 7, 1990 [in Hebrew].

[32] 27 LSI 48 (5733-1972/73).

in national elections from either foreign or domestic corporations or registered partnerships[33] subject to the exception of contributions to a cultural or educational enterprise.

Section 9 of the Political Parties (Financing) Law 5733-1973[34] imposes a duty of bookkeeping of accounts on all party groups. The party group should keep a set of accounts and enter its income and expenditures in it. As to all contributions from resident or foreign sources, Directive No. 8 of the Directives for Political Parties - Financing (Bookkeeping of Political Group Accounts) 5738-1978[35] provides:

- A political group shall prepare a receipt for every contribution from a ready-numbered receipt book;

- a political group shall register such receipt books and specify the names and addresses of people who hold those receipt books;

- in the attachment for each receipt the amount of the contribution as well as details permitting identification of the contributor for purpose of audit should be registered; and

- a current account of goods and services received as contributions should be made.

The same restrictions which apply to the use of monies from government funding apply also to monies from private contributions, including foreign ones. As discussed before, § 7 of the Political Parties (Financing) Law 5733-1973 provides for specific limits on such expenses, whether election expenses or running expenses are provided.

V. Auditing Procedures

From the fifteenth day after the determining day and so long as it is entitled to have its expenses financed, a party group shall (1) keep a set of accounts, and enter its income and expenditure therein, in accordance with the directions of the State Comptroller; and (2) hold the monies designated for its expenses in the bank accounts, the numbers of which have been reported to the Chairman of the *Knesset*.

Within ten weeks from the end of the month in which the election results are published, the representatives of a party group shall deliver to the State Comptroller its accounts for the election period. The State Comptroller may at any time demand of the representatives a signed declaration of the completeness and correctness of the accounts. The State Comptroller should conduct an inspection for the election period and prepare a report indicating (1) whether the party group has kept a set of accounts in accordance with his directives; and (2) whether its expenses

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[33] Political Parties (Financing) 5733-1973, § 8, 27 LSI 50 (5733-1972/73); *See also* Political Parties (Financing) (Amendment No. 5) Law, 5742-1982, § 3, 36 LSI 82 (5742-1981/82).

[34] *Supra note 4.*

[35] 13 *Dinim* (Laws) 5846/d/2 (1986-) [in Hebrew].

and income in the election period were within the limits stated in §§ 7(a) and 8. The above report should be delivered to the Chairman of the *Knesset* within twelve weeks after the receipt of the accounts of the election period from the different party groups, usually within ten weeks from the end of the month in which the election took place.

The State Comptroller is also charged with inspecting the financial accounts of party groups for running expenses.[36] The consequences of an unfavorable report by the State Comptroller are nonpayment of funds otherwise due to the violating party.

Under the State Comptroller's Law (Consolidated Version) 5718-1958 § 14(c), where an inspection of the party's books has revealed that the inspected body has operated in a manner arousing suspicion of a criminal act, the Comptroller shall bring the matter to the knowledge of the Attorney General.[37]

Section 6 of the above Law, as amended, specifies that in fulfilling his obligations the State Comptroller will be responsible to the *Knesset* only and not to the government.[38] This provision guarantees the freedom of action of the State Comptroller in conducting his duties. He does not have to report to the executive branch which he is investigating; his responsibility is to the state.

VI. Penalties for Irregularities in Campaign Financing

Violation of the Elections (Modes of Propaganda) Law, 5719-1959 will result in six months imprisonment or a fine.[39] Furthermore, where such a violation occurred, without prejudice to the criminal responsibility of others, the person who had possession of the monies or property in respect of which the offense was committed or who was charged with the possession or safeguarding thereof will be guilty unless he proves that the offense was committed without his knowledge or that he took steps to prevent it.[40]

Another available measure is the restraining order. Section 17B, added to the law by a 1973 amendment,[41] provides that the Chairman of the Central *Knesset* Election Committee may issue such an order, after giving the interested party an opportunity to present his arguments and

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[36] *Supra* note 4, § 10(c).

[37] State Comptroller's Law (Consolidated Version) 5718-1958, § 14(c), 12 LSI 112 (5718-1957/58).

[38] *Id.* § 6, at 107.

[39] Elections (Modes of Propaganda) Law, 5719-1959, 13 LSI 148 (5719-1958/59).

[40] Elections (Modes of Propaganda) (Amendment) Law, 5721-1961, 15 LSI 179 (5721-1960/61).

[41] Elections (Modes of Propaganda((Amendment No. 4) Law, 5733-1973, § 5, 27 LSI 281 (5733-1972/73).

the other party an opportunity to express an objection. A restraining order is treated as a court order, and its violation constitutes contempt of court which may result in a penalty prescribed by the Penal Code. A person shall not be punished under the provisions of § 1 which prescribes six-months imprisonment or a fine for violation of the law, if he has stood trial or was charged with an infringement of a restraining order.

Those who violate the Political Parties (Financing) Law, 5733-1973,[42] may face one year imprisonment or a fine for falsifying the accounts and the affidavit which is to be supplied to the State Comptroller according to his request.

Violation of the prohibition on obtaining gifts from corporations is punished by the nonpayment of fifteen percent of the amount of governmental financing or by the nonpayment of financing for running expenses for a period of three months.[43] Receipt of private donations which exceed the ceiling provided by §§ 8(b) and (c) discussed earlier will result in a fine of twice the contribution. Recent reports by Miriam Ben Porat, the Israeli State Comptroller, on the financial management conducted by the various political parties participating in the 1988 elections to the *Knesset*[44] found that most political parties complied with the legal requirements of campaign financing. However, several small parties violated the provisions of the Political Parties (Financing) 1973 and the directives issued by the State Comptroller.

In particular, the Progressive List for Peace obtained foreign contributions without documentation and failed to comply with the accounting requirements in violation of § 8. The penalty imposed by the Comptroller was the nonpayment of three months' running expenses. Mapam and Citizens' Rights movement exceeded the ceiling on running expenses prescribed by § 7(b) of the law and were therefore deprived of fifteen percent of the annual financing for Mapam and one-third of the amount in excess for the latter party. Agudat Israel did not comply with the Directives of the State Comptroller and was therefore deprived of one month's running expenses. Shas it seems, drew most of the criticism and therefore the harshest sanction. It was deprived of five full months' running expenses and lost three percent of the funds due to it for election expenses. Specific violations committed by the latter party, such as receipt of contributions from non-profit organizations subsidized by the state are cited in the report. Total disregard, even intentional deceit, is cited as practiced by Shas in handling its accounts.[45] The State Comptroller's report submitted to the Chairman of the *Knesset* was made public immediately, and severe monetary sanctions were imposed accordingly.

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[42] *Supra* note 4.

[43] Hok Minum Miflagot (Tikun Mispar 8) (Political Parties Financing Law) (Amendment No. 8) 5749-1989, *Sefer Hachukim* (Book of Laws Official Gazette) Issue No. 1266 of Feb. 8, 1989 [in Hebrew].

[44] *Supra* note 15.

[45] *Id.* at 6.

VII. Conclusion

Among the shortcomings of the Political Parties (Financing) Law, 5733-1973,[46] are the following:[47]

• The omission of a ceiling on the income of political parties which can be derived from non-governmental sources.

• The omission of provisions regulating the time periods between the current expense periods at the year before the election year and the end of the election period. In fact the parties responded to the State Comptroller's requests to present their accounts for those periods for inspection, but it is recommended that such a response will be obligatory rather than a matter of discretion.

• The determination of dates as well as the financing unit is in the hands of the financing committee of the *Knesset*, the proceedings of which are not open to the public. In her recent report, for example, the State Comptroller criticized the practice of retroactive legislation increasing the ceiling on expenditures.[48]

• The legislature is also the representative of the parties enjoying financing by law. In this capacity the legislature was able retroactively to amend provisions of the law by either raising the ceiling of expenses allowed to be spent or by minimizing the sanctions for deviation from the ceiling allowed by law. In H.C. 141/82, *Rubinshtein et al. v. Chairman of the Knesset*,[49] the Court criticized such retroactive legislation which not only removes the deterrence implication of the law but also nullifies its basic and moral purpose.

• The Political Parties (Financing) Law, which was supposed to limit the expenses of the parties in order to free them from the need to continuously search for financial resources, has only created another means of financing for parties. The parties did not become independent of outside donors by receiving government financing and continued in a constant search for contributors.

Despite the above criticism, the State Comptroller was able, using her legal authority, to bring the parties to restraint in incurring expenses, collecting income and in conducting proper accounting according to the State Comptroller's directions.

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[46] 27 LSI 48 (5733-1972/73).

[47] Zur N. *Mimun Milflagot Ubikoret Hamedina* (Financing of Parties and State Comptrolling) article by A. Fridberg. "Bikoret Hamedina Be-Yisrael (State Comptrolling in Israel) 339 (1990) [in Hebrew].

[48] State Comptrollers report, *Supra* note 15, at 3-5.

[49] A. Fridberg, *Supra* note 44, at 340.

It is believed that the electoral changes anticipated to take place in Israel in the future[50] will have a great effect in the campaign financing area.

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[50] *See e.g.*, the 1989 draft of "Constitution for the State of Israel," available at LLNEA.

Data on Expenditures of the 12th Election to the Knesset [U.S. $1.00 = 2 New Shekels]

List of Candidates	Prior amending "Financing Unit"	After Amendment	Expenditures	Excess of Allowed Ceiling of Expenditures: Prior to Amendment	Excess of Allowed Ceiling of Expenditures: After amending "Financing Unit"
1. Degel Hatorah	928,512	1,440,000	1,578,770	650,258	138,770
2. Likud	17,744,896	27,520,000	23,750,183	6,005,287	
3. Labor Alignment	16,506,880	25,600,000	24,860,883	8,354,003	
4. Arab Democratic Party	928,512	1,440,000	438,782		
5. Progressive List for Peace	928,512	1,440,000	707,295		
6. Shas	2,476,032	3,840,000	2,082,655		
7. Tehiya	2,063,360	3,200,000	1,662,028		
8. Democratic Front for Peace and Equality	1,650,688	2,560,000	894,804		
9. Agudat Yisrael	2,063,360	3,200,000	1,519,378		
10. Moledet	928,512	1,440,000	241,573		
11. National Religious Party	2,079,000	3,200,000	3,212,027	1,133,027	12,027
12. Mapam	2,476,032	3,840,000	2,374,850		
13. Tsomet	928,512	1,440,000	565,537		

Data on Expenditures of the 12th Election to the Knesset [U.S. $1.00 = 2 New Shekels]

List of Candidates	Prior amending "Financing Unit"	After Amendment	Expenditures	Excess of Allowed Ceiling of Expenditures: Prior to Amendment	Excess of Allowed Ceiling of Expenditures: After amendir "Financing Un
14. Citizens Rights Movement	2,063,360	3,200,000	1,970,986		
15. Center Shinui Movement	1,650,688	2,560,000	1,066,167		
16. Other Parties	1,857,024	2,880,000	555,017		
			67,480,935		

ITALY

I. Introduction

Italy is a democratic republic. Sovereignty is vested in the people and is exercised according to the principles of the Constitution of 1948. The bicameral Parliament is elected by universal and direct suffrage for five years. The Chamber of Deputies is composed of 630 members elected by voters who have reached the age of 18 years. The Senate is composed of 315 members elected on a regional basis by people who have passed the age of 25.

Based on the strict doctrine of separation of powers, legislative prerogatives belong to Parliament while the executive branch or government may exercise legislative power only with the consent of Parliament for a limited time and for definite purposes. The Chambers are on a position of parity and exercise legislative functions collectively, having the power to declare a state of war, to delegate the President of the Republic to grant amnesties and general pardons, and to ratify international treaties.

It has been observed that:

> Italy has one of the most proportional and complex of electoral systems. It reflects all too faithfully the fragmentation and immobility of the Italian electorate. While it cannot be held responsible for creating the acute political difficulties from which Italy suffers, it can certainly be criticized for failing to contribute to their alleviation.[1]

There is a long history of debates over the need for electoral reform in Italy. The very principle of proportional representation was challenged in 1953 by the ruling majority formed by a coalition of Christian Democrats, Liberals, Republicans, and Social Democrats, which aimed at preventing an erosion of their politico-electoral strength and at consolidating their hold on Italian institutions.[2] That unsuccessful attempt, known as the so-called *legge truffa* (swindle law), was reminiscent of a similar mechanism used by the fascist regime to manipulate the elections of 1924, and produced ... "the unintended consequence of preventing for two decades any further consideration, let alone proposal, for the reform of the Italian electoral system."[3] The debate has acquired new momentum, but consensus on a new formula has not been reached yet.

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[1] V. Bogdanor & D. Butler, *ed., Democracy and Elections* 110 (Cambridge, 1983).

[2] G. Pasquino, "That Obscure Object of Desire: A New Electoral Law for Italy," *West European Politics* 281 (July 1989)

[3] *Id.*

The Italian multi-party system is dominated by two major parties; the Christian Democrat and the Communist, but neither one of them enjoys an absolute majority. All other parties, with the exception perhaps of the Socialists, are considerably smaller.

There is no legislative regulation of political parties in Italy. They are unincorporated associations that lack independent legal personality and are subject only to the general provisions of the civil code applicable to such unincorporated associations. Nevertheless, political parties play a significant role in Italy where they dominate political life and control the compilation of lists of candidates for elections. The candidate lists are freely selected by party officials, largely for political reasons. This is a very critical area in which a legislative solution could force into the life of political parties a good dose of democracy as required by the constitution. The following table displays the results of the most recent general elections and elections to the European Parliament.[4]

The 1989 and 1984 European election results and 1987 general election results

Parties	European election 1989 %	European election 1984 %	General election 1987 %	European elections seats 1989	1984
Christian Democratic	32.9		34.3	27	26
Communist	27.6	33.0	26.6	22	27
Socialist	14.8	33.3	14.3	12	9
Neo-Fascist	5.5	11.2	5.9	4	5
Social Democratic	2.7	6.5	2.9	2	3
Republican-Liberal	4.4	3.5	5.8	4	5
Radical	----	6.1	2.6	--	3
Proletarian Democracy	1.3	3.4	1.7	1	1
Lombard League	1.8	1.4	0.5	2	--
Green	3.8	----	2.5	3	--
Rainbow Green	2.4	----	----	2	--
Others	2.8	----	2.9	2	2
		1.6			

[4] S. Gundle, Italy, 8 *Electoral Studies* 293 (December 1989).

II. Government Funding

A. Direct Funding

The first law on financing of political parties was introduced in 1974. In the period of about 30 years preceding it, the need was felt for some form of regulation of political parties and their activities in order to guarantee their democratic organization in harmony with the principle of article 49 of the Constitution which established that all citizens have the right to organize themselves in parties in order to democratically participate in the determination of national policy. The type of legislative approach that would have imposed much restraint on political parties and public scrutiny never gained support. Over the years, an ever growing need for funds to assure the survival of their organizations suggested to party leaders a compromise approach in which the proposed legislative regulation was to be accompanied by the recognition that some form of financial intervention on the part of the State was necessary.

The parties' opposition to any external control, however, made it impossible to reach such a solution. Nothing was done until the time was ripe for legislation that would open the door to State contributions without imposing any major regulation on political parties or very strict control of their finances.

On May 2, 1974, Law No. 195[5]--State Contribution to the Financing of Political Parties--was approved but it failed to calm the heated controversy and disagreements which had characterized the debate preceding its approval. Law No. 195 was amended by Law No. 11 of January 16, 1978, law No. 422 of 1980, Law No. 659 of 1981, by Law No. 22 of 1982, and by Law No. 413 of 1985.[6] The second and third laws extended public financing of campaign expenses to political parties for regional elections and elections to the European Parliament.

Under current legislation, governmental funds in the amount of 30 billion lire (about U.S. $26 million) are provided directly to political parties as reimbursement for campaign expenses. Twenty percent of the total amount is divided equally among all the parties qualified to receive it.[7] The remainder of that sum is distributed proportionally among them according to the number of votes received by each party.

Furthermore, an additional annual aggregate contribution that, beginning in 1981, amounts to 82 billion 886 million lire (about U.S. $72.7 million) is made available to parliamentary groups

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[5] *Gazzetta Ufficiale della Repubblica Italiana* [Official Law Gazette of the Italian Republic] (GU), No. 135 (May 25, 1974).

[6] GU, No. 23 (January 24, 1978); No. 220 (August 12, 1980); No. 323 (November 24, 1981); No. 30 (February 1, 1982); No. 194 (August 19, 1985).

[7] Parties presenting lists of candidates in more than two-thirds of the electoral districts and obtaining no less than 300,000 votes or two percent of the national vote qualify for reimbursement. In regions with special status, which afford special protection to linguistic minorities, parties and other political organizations obtaining at least a quota for either of the Chambers qualify for funds.

(caucuses of political parties) for ordinary management expenses. This sum is distributed according to a similar votes-received, proportional criteria. The law does not impose special conditions on the use of the contributions and leaves the internal distribution of the funds to the discretion of each party. However, any other contributions are prohibited when disbursed, under any form, directly or indirectly, by organs of the public administration, government agencies, or by companies (and those controlled by them) over twenty percent of whose capital is controlled by the State, in favor of political parties, their internal organizations, parliamentary groups, members of or candidates to national and European parliaments, and candidates or elected officials at the regional, provincial, and local level. The same prohibition applies to contributions or financing granted to political secretaries and other top party officials with political or administrative responsibilities, at any level from national to local.

B. Indirect Funding

The state-controlled radio and television broadcasting system--RAI-TV--makes free broadcasting time available to political parties and groups represented in Parliament, as well as to labor unions, the press and other groups of social relevance. Such free broadcasting time is scheduled and closely monitored by a special parliamentary committee. There are no tax exemptions or credits for contributors, but it has been suggested that this would be a reasonable approach provided that contributions would be made public.

III. Private Funding

A. Domestic Sources

Private financing is permitted by both domestic and foreign business entities, private individuals or organized groups. The law establishes that when such contributions are made by private business entities they must be voted upon by their boards and be entered into their balance sheets. All contributions in any form made by these entities, by private individuals, and groups to any of the recipients mentioned in the preceding section, must be reported to the president of the Chamber of Deputies in a document signed jointly by the contributor and the recipient when the contribution exceeds 5 million lire (about U.S. $4,385) during a year. However, no limits on the amount of contributions or on party spending are found in the law.

B. Foreign Sources

Regarding contributions from abroad, the law simply states that they must be reported by the recipient only. With such wording the law opens the door to any contribution of any amount that may be disbursed by a foreign State, a foreign citizen or company without any reporting obligation on their part. The serious implications of such an approach are self evident.

IV. Penalties

Violations of the established prohibition of financing and contributions by organs of the public administration, other agencies, and state controlled companies, or private companies when the proper procedures are not followed, entail penalties ranging from six months to four years of imprisonment, and fines triple the amount of the contribution for both the contributor and the

recipient. Law No. 659/1981 established an additional penalty. When a court makes a decision that illegal contributions have been made in favor of political parties, their internal organizations or parliamentary groups, the amount of the government financing is reduced by an amount equal to twice the sum illegally received.

Regarding all private contributions, failure to abide by the reporting requirements and procedure, and false reporting entail a fine ranging from two to six times the amount not reported. In addition, temporary disqualification for public office, as regulated by article 28 of the Criminal code, is imposed. The law also includes provisions detailing procedures to follow regarding the budgets of political parties and their publications and assigns these responsibilities to top party officials. For irregularities in the compilation of the budgets and for failure to apply the established procedure, the law simply states that public financing is suspended until all irregularities are taken care of. Competence to decide any controversy pertaining to these matters is reserved to the Offices of the Presidents of the Two Chambers. The absence of any serious penalty, in combination with the fact that the registered accountants that review the budgets and related documents are practically chosen by the parties themselves, may be interpreted as indicating the legislators' intention of avoiding any strict control of the finances of political parties.

Crimes of illegal financing of political parties, in spite of their sensitive nature and great importance for the democratic life of the country, have been scarcely scrutinized since the introduction of the legislation analyzed in this report. In fact, a search of the available sources produced only one case of judicial investigation in 1979 which ended on the request of the public prosecutor before even going to trial.[8]

V. Conclusion

One may think of different reasons for what appears a generalized failure to apply this law, but certainly the lack of systematic analysis by legal scholars and the serious problem of interpretation of a law made in haste and poorly worded have played a major role. There seems to be a widespread opinion in Italy that the law left many gaps for corruption to develop and for confusion between public and private, politics and public administration, and between activities of political parties and government responsibilities.

Law 195 was approved in 1974 under the pressure of one of the major scandals that have plagued the life of political parties in Italy[9] as an attempt to restore their credibility. All the words freely spent and the solemn promises of moral action made during the debate in 1974 were recalled in a 1985 magazine report written to appraise the situation ten years after the introduction of Law

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[8] Banca, Borsa, 1979, II, p.361, but also IV *Giurisprudenza Italiana*, at 377 (1980).

[9] G. Galli, *L'Italia Sotterranea* (Roma, La Terza, 1983); S. Turone, *Partiti e Mafia dalla P2 alla Droga* (Roma, La Terza, 1985); P. Chiara, *Una Storia Italiana Il Caso Leone,* (Milano, Sperling & Kupfer, 1985); F. Cazzola, *Della Corruzione* (Bologna, Il Mulino, 1985); A. Cerbone, *Eutanasia di un Partito* (Napoli, Ed. Letteratura Internazionale, 1989).

195.[10] The picture emerging from the article is disconcerting, and it appears that the promised "glass house" for the political parties in Italy is far from being built. The Chief Public Prosecutor of the Court of Appeals of Rome declared that: "Extortion[11] has become customary by now, involving public powers in such a way that a criminal ring of vast proportions has emerged."[12] Although reform laws have been proposed, they have never found the necessary support to be made into law.[13] In a similar fashion, the reform of the electoral laws has not gone beyond interminable discussion.[14]

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[10] *L'Espresso*, February 17, 1985.

[11] The term *la tangente* is commonly associated with Mafia criminal activities.

[12] *Supra*, note 9. *See also* "The Mafia - Italy's Festering Wound," *Swiss Review of World Affairs* 18-24 (August 1985).

[13] *Il Corriere Della Sera*, September 29 and October 2, 1984 at 2.

[14] *Supra*, note 2. *See also* G. Cuomo, "Electoral Systems: The Italian Experience," 9 *Journal of Regional Policy* 33-43 (January/March 1989).

JAPAN

I. Introduction

The Japanese government consists of three branches: the Diet, the Cabinet, and the judiciary. The Diet is a bicameral legislature composed of an upper house (the House of Councillors) and a lower house (the House of Representatives). Executive power is vested in the cabinet, which consists of the Prime Minister and other ministers. Under the Constitution,[1] the Prime Minister is to be elected by the House of Representatives, but the leader of the majority party usually becomes the Prime Minister.

The Cabinet is empowered to dissolve the lower house and call for general elections. It is obliged to resign upon a vote of no confidence taken by the House of Representatives. Judicial power is vested in the judiciary, consisting of the Supreme Court and lower courts. The Emperor performs only those acts specified by the Constitution and has no legal right to rule the country.

Japan has five major political parties: the Liberal Democratic party (LDP), the Japan Socialist party (JSP), the Communist party, the Komeito and the Democratic Socialist party, and several minor parties such as the New Liberal Club, the Socialist Democratic Federation, and the Rengo.[2] The LDP has been in power uninterruptedly without coalition since it was established in 1955.[3]

Each of these parties has its own special fund-raising methods. The LDP, known as the party of big business, often turns to industry and financial institutions. The JSP and the Democratic Socialist Party depend on two giant federations of labor unions, Sohyo and Domei, respectively, for their financial support. The Communist Party mostly raises its funds from individual membership dues and the sale of party publications.[4]

For lower house elections, the 512 seats are divided among 130 electoral districts. Each district elects from three to five representatives, with the exception of one district that elects a single representative. Japan's current legislative electoral system is a combination of multimember districts and a single nontransferable vote that is unique for national elections in democratic countries around the world.[5]

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[1] Promulgated on Nov. 3, 1946; came into force on May 3, 1947.

[2] *Yomiuri shinbun*, Feb. 20, 1990.

[3] R. J. Hrebenar, "Rules of the Game: The Impact of the Electoral System on Political Parties," *in his The Japanese Party System* 32 (Boulder, Colo., 1986).

[4] *Id.* at 65.

[5] *Id.* at 33.

For upper house elections, the 252 seats are divided into 100 seats elected through a national (proportional representation) constituency system (from 1983), under which voters write the name of a political party rather than a candidate on their ballots, and 152 seats elected by local districts. Every three years, one-half (126 seats) of the total membership is elected: 50 Members by the national constituency system and 76 Members by the prefecture-wide districts.[6]

The most recent election of Members of the upper house, held on July 23, 1989, marked the first time since its founding that the LDP lost to the JSP in a national election. The election results were as follows: the LDP won 36 seats (vs. 73 in 1986); the JSP, 46 (vs. 20 in 1986); other parties combined, 44 (vs. 33 in 1986).[7] On February 19, 1990, elections to the lower house were held. The LDP once again was able to obtain a majority of 286 seats, while the JSP received 140 seats and the other parties combined won 86 seats.[8]

II. Regulatory Statutes

Political funds and election campaigns are regulated by two major statutes, the Political Funds Control Law (PFCL) of 1948[9] and the Public Office Election Law (POEL) of 1950.[10] The former regulates political contributions (*seiji kenkin*) and spending and specifically requires the public reporting of such matters by political organizations. The latter regulates in detail all election campaign activities, including the formal accounting, reporting, and publication of campaign fund expenditures by candidates and organizations designated by the candidates, as well as indirect government funding of elections.

III. Government Funding

A. Direct Funding

Neither the Political Funds Control Law nor the Public Office Election Law contains any provision dealing with government funds directly available to political parties or candidates. However, under the Law Granting Legislative Expenses to the Respective Parliamentary Groups in the National Diet,[11] the Government does subsidize partial expenses for legislative research

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[6] H. Baerwald, "Japan's House of Councillors Election," 29 *Asian Survey* 837 (Sept. 1989).

[7] *Id.* at 838.

[8] *Supra* note 2. For information on both the lower house and upper house elections, *see also* S. Lesbriel, "Notes on Recent Elections: The 1989 and 1990 Elections in Japan," 9 *Electoral Studies* 229 (Sept. 1990).

[9] Law No. 194, July 29, 1948, as last amended by Law No. 81, Aug. 24, 1982.

[10] Law No. 100, Apr. 15, 1950, as last amended by Law No. 94, Dec. 13, 1988.

[11] Law No. 52, July 7, 1953, as last amended by Law No. 17, Apr. 5, 1986.

undertaken by inter-parliamentary party affiliations known as *kaiha*. The legislative activities of both houses are carried out on the basis of these *kaiha*, which must be established by resolution of the Management Committees of each house.[12]

In order to qualify for the funds, each group must register as a political organization under article 6, paragraph 1, of the Political Funds Control Law. Hence, such legislative funds may be regarded as a part of political funds, in a broader sense.[13] Each *kaiha* is provided with government subsidies proportionate to the total number of members of the Diet, on the basis of 650,000 yen (about U.S. $4,925, at 132 yen to $1.00) per candidate (Law Granting Legislative Expenses, art. 3).

B. Indirect Funding

Under the provisions of the Public Office Election Law, the Government has attempted to reduce the cost of elections by subsidizing campaign costs.

1. Transportation

Any candidate who uses an automobile for an election campaign under a contract with the operator of a passenger transport business or others (except the candidate's relatives) will be reimbursed by the Government for the cost of using such a vehicle, provided that the deposit[14] required for candidacy is not forfeited (POEL, art. 141, ¶5). During the campaign period, 15 free tickets for the use of public transportation are issued to a candidate (POEL, art. 176).

2. Mailings and Postings

Each candidate for membership in the lower house is allowed to mail up to 35,000 postcards free of charge. For the election of members of the upper house (local districts only), this number may be increased, depending on the size of the electoral district (POEL, art. 142). Similarly, within certain limits, the making of handbills and posters is allowed, and the candidate will be reimbursed for the cost (POEL, art. 142, ¶8; art. 143, ¶14).

3. Advertisements

The Government will pay for a certain number of political advertisements that every candidate is allowed to make. Thus, in elections for members of the lower house and the upper house (local districts only), each candidate is allowed to place five newspaper advertisements of a specified length, which may appear in any newspaper of the candidate's choosing during the campaign period (POEL, art. 149, ¶1, 4). In the elections for members of the upper house to be

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[12] K. Matsuzawa, *Gikaiho* (Parliamentary Law) 285-292 (Tokyo, 1987) (Gendai Gyosei Hogaku Zenshu, 11).

[13] M. Matsuura & K. Otake, *Seiji shikin* (Political Funds) 7 (Tokyo, 1984).

[14] Each candidate is required to make a deposit of a specified amount when he registers.

chosen by national constituency, each candidate is allowed to make the following number of advertisements, in any newspaper:

No. of Candidates Listed	No. of Advertisements
1 to 8	up to 16
9 to 16	up to 32
17 to 24	up to 48
over 25	up to 64

Each qualified political party is allowed to run four newspaper advertisements at the government's expense. However, the advertisements can be used only to publicize the party's policies; discussion of an individual's candidacy is illegal (POEL, art. 201-15). Except for advertisements funded by the government, candidates are not allowed to buy space in newspapers or magazines.

Each candidate for the lower house and the upper house (local districts only) is allowed to broadcast his political views by using the facilities of the Japan Broadcasting Corporation (Nippon Hoso Kyokai, NHK) and any privately-owned radio and/or television stations. The broadcasts are free of charge and may last a maximum of 5 minutes and 30 seconds each time, up to a total of 8 times (4 times on NHK and 4 times on private stations), during the campaign period (POEL, art. 151). The actual number of broadcasts permitted on private stations is predetermined for each electoral district. In the elections for members of the upper house to be chosen by national constituency, each political party is allowed to make the following number of broadcasts on the NHK station (up to 14 minutes each time):

No. of Candidates Listed	No. of TV Broadcasts	No. of Radio Broadcasts
1 to 8	2	1
9 to 16	4	2
17 to 24	6	3
over 25	8	4

In addition, immediately before broadcasting his views, the candidate or the political party spokesman is allowed to make a biographical statement of up to 30 seconds in length, on any station.[15] Furthermore, NHK makes radio broadcasts of candidates' biographical statements free of charge, about 10 times per candidate for lower house and upper house (local districts) seats and five times per candidate for upper house (national constituency) seats. Unlike candidates for election in the United States, in Japan candidates spend nothing on media advertising, as they are not allowed to buy time on television or radio.

Election Management Commissions provide the following free services: establishment of official sign boards for posters, arrangement of public meeting places where candidates can give speeches, and publication of election bulletins that contain the name, personal history, and political

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[15] The Regulation for Broadcasts of Candidates' Political Views and Biographical Statements, arts.1-2 & 2, Tables 1 & 2, Notice No. 139 of the Ministry of Home Affairs, Sept. 1, 1969, as last amended by Notice No. 91, May 12, 1989.

views of the candidate. Indirect subsidies for each of the above activities--including transportation, mailings and postings, and advertisements--are spelled out in the Law Concerning Standards for the Election of National Diet Members.[16]

4. Tax Benefits

Under the Income Tax Law,[17] qualified political contributions made by an individual in amounts that exceed 10,000 yen in one year may be deducted from the person's total income (ordinary, retirement, and forestry income) for the taxable year (art. 78, ¶2). However, the total amount of political contributions may not exceed 25% of the individual's total income.

In order to qualify as political contributions, the contributions must be made to political parties, political fund-raising organizations, political support organizations (including those supporting particular candidates), or candidates and must be reported as required under the Political Funds Control Law (art. 12, ¶1) or the Public Office Election Law (art. 189). Unless the required reports are filed with the Election Management Commission or the Minister of Home Affairs, no tax credits are allowed.[18]

The contributions received by a candidate from either an individual or a corporation are exempt from taxation, if the candidate reports them as political contributions to the Election Management Commission (Income Tax Law, art. 9, ¶1, item 17; Inheritance Tax Law, art. 21-3, ¶1, item 6). Other than the tax credits and exemptions mentioned above, no funds are used to encourage voting or to explain voting procedures to the electorate.

IV. Non-Government Funding

A. Prohibitions Against Certain Types of Contributions

Under the Public Office Election Law, any candidate for public office or any person intending to be a candidate is banned from making contributions (of money, goods, or other items of monetary value) to his own electoral district. A support organization is also banned from making contributions, except to activities or projects authorized by the organization's stated objectives. Even if it may fall within the scope of contributions authorized by the organization's objectives, the presentation of wreaths, flowers, obituary offerings, or wedding gifts is banned. Likewise, any corporation or association in which a given candidate serves as a director, auditor, or other responsible officer or any company or association that uses the candidate's name or is presumed to use his name is banned from making the above-mentioned types of contributions to his candidacy (arts. 199-2 to 199-5).

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[16] Law No. 179, May 15, 1950, as last amended by Law No. 28, June 28, 1989.

[17] Law No. 33, Mar. 31, 1965, as last amended by Law No. 239, Aug. 1, 1989. *See also* The Political Funds Control Law, art. 32-2.

[18] T. Yamamoto, *Shokai seiji shikin kiseiho* (Commentary on the Political Funds Control Law) 339 (Tokyo, 1976).

Under the Political Funds Control Law, a corporation or juridical person who receives subsidies, grants, or loans from the government or who is a party to a government contract is banned from making or receiving political contributions within one year from the time when the corporation or juridical person is notified of the government's approval of such subsidies or grants, regardless of whether there is an election or not (art. 22-3). Any corporation operating at a loss for more than three years, any person who promises a good office in return for a political contribution, or any anonymous persons are expressly prohibited from making or receiving political contributions, regardless of whether an election is to be held or not (art. 22-4, 22-6).

B. Limits on the Amount of Political Contributions

The Political Funds Control Law requires all political organizations[19]--including political parties, political fund-raising organizations, political factions, and political support organizations--to register with the local Election Management Commission[20] of To, Do, Fu, or Ken (the Tokyo metropolis, Hokkaido, or an urban or rural prefecture) or with the Ministry of Home Affairs within seven days from the day of establishment of such an organization. No contribution will be accepted and no payment will be made by a political organization, under any circumstances whatsoever, until registration has been completed.

Larger corporations, with more capital than smaller corporations, may contribute larger sums to political parties or candidates. The annual ceiling for such contributions is as follows:

(1) A corporation with capital of:	Maximum Yearly Political Contribution:
under 1 billion yen	7.5 million yen
between 1 and 5 billion yen	15 million yen
over 5 billion yen	30 million yen
over 10 billion yen	100 million yen
(2) A labor union whose total membership is:	
less than 50,000 members	7.5 million yen
between 50,000-100,000 members	15 million yen
over 100,000 members	30 million yen
(3) Organizations other than those mentioned in (1) and (2):	

[19] As of 1987, 4,753 political organizations were registered. *See* N. Washisaka, "Seijin shikin no bunseki (1)" (Analysis of Political Funds (1)) 64 *Jichi kenkyu* 56 (Dec. 1988).

[20] The Central Election Management Commission, attached to the Ministry of Home Affairs, manages the election of Members of the House of Councillors in the national constituency and 47 local Election Management Commissions manages the election of Members of the House of Representatives and the House of Councillors in local districts. POEL, art. 5.

under 20 million yen	7.5 million yen
between 20 and 60 million yen	15 million yen
over 60 million yen	30 million yen
(4) A political party	No restrictions

The above limits are applicable to contributions made to political parties, political fund-raising organizations, and candidates. For the time being, contributions to political factions and support organizations are limited to one-half of the above limits (art. 5, 1985 Supplementary Provisions). Thus, a giant corporation would be permitted to donate up to 150 million yen (about $1,136,000) a year to various parties and candidates, including 50 million yen to various factions and support organizations. Contributions to any single political faction, support organization, or candidate are limited to 1.5 million yen (about U.S. $11,360) (art. 22-2), but this restriction does not apply to contributions made to any single political party or political fund-raising organization.

For the first time since 1975, annual contributions (except testamentary gifts) made by individual citizens to political parties, political fund-raising organizations, or candidates are now to be restricted to 20 million yen; to political factions or support organizations, 10 million yen; and to any single political faction, support organization, or candidate, 1.5 million yen (art. 22-2).

C. Limits on Campaign Expenditures

The Public Office Election Law sets a ceiling on the amount that a candidate is allowed to spend legally on one election. For lower house elections, the allowable limit is computed as follows (art. 194; art. 127 of the Enforcement Order):

(1) For lower house elections

$$\frac{\text{No. of registered voters in election district}}{\text{No. of seats in election district}} \times 28 \text{ yen} + ¥10{,}700{,}000$$

(2) For upper house elections

$$\frac{\text{No. of registered voters in election district}}{\text{No. of seats in election district}} \times 8 \text{ (or } 12) + ¥13{,}600{,}000$$

There is no spending limit placed on candidates for election to membership in the upper house through the national constituency.[21] Virtually all candidates for seats in the lower house have reported exact expenditures that are substantially lower than the limit allowed. Although any

[21] Y. Akiyama, *Senkyo seiji katsudo ho* (Election and Political Activities Law) 291 (Tokyo, 1984).

violator of the expenditure limit is subject to penal sanction, no Diet member has as yet been reported to have been prosecuted or denied a seat on these grounds.[22]

V. Regulation of Foreign Campaign Contributions

Foreign campaign contributions are prohibited under article 22-5 of the Political Funds Control Law. It provides that no one shall receive political contributions from a foreigner, a foreign corporation, or a group or organization primarily composed of foreigners or foreign corporations.

VI. Disclosure Procedures for Campaign Financing

Under the Political Funds Control Law, the treasurer of a political organization is required to keep in the organization's office financial records of all sources of income, including party dues, membership fees and contributions, and all expenditures (art. 9, ¶1, item 1). In addition, the treasurer must submit the following particulars to the Minister of Home Affairs or the local Election Management Commission: (1) the total number and the total amount of party dues or membership fees received and (2) the name, address, and/or profession of any contributor, and the amount and date of the contribution, if the total amount contributed by said person to either the political party or a political fund-raising organization exceeds 10,000 yen (about $76), or if, in the case of a contribution to a political faction or support organization, the total amount of said contribution is in excess of 1,000,000 yen (U.S. $7575) (art. 12, ¶1, item 1). The same requirements also apply to any person who offers to serve in a similar capacity in order to solicit such contributions. The treasurer must retain a copy of the report for a three-year period after it has submitted the original to the local Election Management Commission or the Minister of Home Affairs (art. 16).

The Minister of Home Affairs or the Chairman of the local Election Management Commission, upon receiving the treasurer's financial report, must announce the gist of the report in the Official Gazette or the local official gazette, respectively, and retain the report for a three-year period after the official announcement of its contents, to be presented for public perusal upon demand (arts. 20, 21). If the Minister of Home Affairs or the local Election Management Commission considers the financial statement and accompanying documents submitted to be insufficient or incorrect, he may order them to be supplemented or corrected (art. 31). A similar requirement applies to the candidate himself. If a candidate receives political contributions, he is required to turn them over (except for campaign contributions) to a designated organization selected from among his own support organizations. The treasurer of the designated organization must report these political contributions to the Minister of Home Affairs or the local Election Management Commission. This requirement is designed to distinguish political funds from private funds. In exceptional cases, if a candidate cannot designate an organization, he himself must directly report the money retained under his personal control (art. 19 to 19-8).

Under the Public Office Election Law, a similar disclosure requirement is applicable when a candidate receives campaign contributions. The candidate must appoint an accountant

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[22] R. J. Hrebenar, "The Money Base of Japanese Politics," *supra* note 3, at 62.

responsible for revenue and expenditures relating to the election campaign or, in certain cases, must serve as the accountant himself. The accountant has the duties of keeping the account books and reporting the candidate's financial statement to the local Election Management Commission. The Law expressly requires, among other things, that the accountant specify in writing the maximum amount he is authorized to spend (arts. 180-197). Except for stipulating that penal sanctions apply to violators of the disclosure requirement (*see below*, under Penalties), the Law does not provide for any kind of government auditing.

VII. Penalties

The punishments outlined in the Political Funds Control Law and the Public Office Election Law range from fines to imprisonment. They are as follows:

A. The Political Funds Control Law (arts. 23-32)

1. Imprisonment not to exceed five years or a fine not to exceed 300,000 yen (about U.S. $2,273). This penalty applies to unauthorized acceptance or expenditure of contributions prior to the registration of a political organization, failure to make a financial statement, or positing a false financial statement.

2. Imprisonment not to exceed three years or a fine not to exceed 200,000 yen (about U.S. $1,515). Acts to which this penalty applies are the failure to maintain and preserve account books and the making of false entries in account books; failure to present a detailed financial statement; failure to observe an order to correct a financial statement; failure to observe the duty to hand over business to another treasurer; violation of the contribution limit imposed on companies that are subsidized by the government, companies operating at a loss, foreign nationals, and anonymous persons. These penalties are applicable not only to the treasurer of the candidate's political organization or the organization designated by the candidate to do the accounting but also to an accountant appointed by the candidate as set forth in the Public Office Election Law.

3. A fine not exceeding 200,000 yen is to be imposed on any person who makes or receives political contributions in excess of contribution limits; any corporation that receives subsidies or grants from the government and makes political contributions; any corporation operating at a loss that makes political contributions; or any person who receives contributions from a corporation operating at a loss.

B. The Public Office Election Law (arts. 246 to 249-5)

1. Imprisonment not to exceed three years or a fine not to exceed 200,000 yen applies to any person who coerces a candidate into making a contribution or any person who solicits or demands such contributions from a candidate with the intent to cause him to lose the election or his right to be elected.

2. Imprisonment not to exceed one year or a fine not to exceed 100,000 yen is imposed on any candidate or any person intending to be a candidate who makes contributions to

his own electoral district or makes contributions in connection with an election or in excess of the normal degree of social intercourse or on any person who coerces a person other than a candidate

into making a contribution or demands or solicits such a contribution. Moreover, once punished, the candidate will be deprived of his right to serve as a public official.

3. A fine not to exceed 200,000 yen is applicable to contributions made by a corporation with which a candidate has a special relationship; contributions made by a corporation that use the candidate's name; or contributions made by a support organization.

VIII. Cases

One test case of the legality of political contributions by corporations was the suit brought in 1961 by a shareholder in Yawata Iron and Steel Company against two of the company's directors. The suit alleged that the 3.5 million yen donation given in 1960 to the Liberal Democratic Party was illegal, because it violated the Commercial Code and Yawata's articles of incorporation. The donation was an activity, it was argued, well outside the scope of the corporation's normal and legitimate activities and thus contravened the Code. The company defended itself by arguing that political donations were customary. The Tokyo High Court decided against the company in 1963. Political parties of a wide range of views all condemned the ruling as inconsistent with prevailing practice as recognized by the Tokyo High Court, which held Yawata's contribution legal. The decision was subsequently upheld by the Supreme Court on June 24, 1970. The Supreme Court opinion stated that a corporation, like a natural person, has the freedom to engage in political activities by supporting, promoting, or opposing particular policies of the government and political parties. Indeed, a political contribution is part of that freedom...." Thus, the Supreme Court has recognized the right of Japanese corporations to contribute to political parties.[23]

The most recent prominent case of campaign financing abuse is the Recruit scandal.[24] The Recruit conglomerate consisted of job placement magazines, a communications network, financing companies, and real estate investments. The President, Hiromasa Ezoe, made extensive campaign contributions in various forms from 1984 to 1989 (totalling 1.3 billion yen) to senior politicians, primarily from the Liberal Democratic Party. In addition to such traditional forms of contribution as buying large numbers of tickets to *hagemasukai* (encouragement parties) and giving money to *koenkai* (support organizations), he discovered a new method of contribution: he gave shares of Recruit Cosmos at a bargain price, before their listing on the stock exchange, to politicians and

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[23] 24 *Minshu* 625 (1970), as cited by I. Asano, "Rikuruto no seiji kenkin o meguru hoteki shomondai" (Various Problems Arising From Political Contributions by the Recruit Company) 947 *Jurisuto* 50 (Dec. 15, 1989).

[24] Prior to the Recruit scandal, there were seven famous cases involving campaign financing abuse: the Showa Denko Scandal (1948), the Shipbuilding Scandal (1954), the Black Mist Scandal (1967), the Premier Tanaka Scandal (1974), the Lockheed Scandal (1976), and the Douglas-Gramann Scandal (1979). For more information about these scandals, *see for example* T. Murofushi, *Oshoku no kozo* (The Framework of Official Corruption) (Tokyo, 1982).

provided low or no-cost financing to those who wanted to purchase additional shares. Once the stocks were listed on the Tokyo Stock Exchange, a $5,000 investment reaped as much as $50,000. In return, Ezoe demanded favors such as building variances and the bending of various regulations that affected Recruit ventures. Many well-known political figures, including 44 Diet members, the Prime Minister, and several key ministers, were implicated and the courts are still dealing with the case.[25]

IX. Conclusion

Japanese election campaigns, including campaign financing, are governed by a set of comprehensive laws that are the most restrictive among democratic nations. Although the Political Funds Control Law was revised in 1975 to better control political contributions and to restrict the amounts candidates could spend on campaigns, election campaigns in Japan remain extraordinarily expensive. It is not unusual for some LDP candidates to spend more than a million dollars to finance their campaigns.[26] In the 1984 elections, a total of over 116 billion yen in political funds was reportedly spent.[27] In 1987, the total amount of contributions climbed to over 144 billion yen, but represented a decline of 13.9 percent from the 167 billion yen spent in 1986.[28] The situation is exacerbated by Japan's multimember single vote system, under which candidates from the same party often compete with one another, resulting in each spending huge amounts of money on their individual election campaigns.

In recent years, politicians and political organizations have tended to hold large fund-raising parties, which have now become a major source of income, especially since corporations usually buy up blocks of tickets to such parties. Although party earnings obtained through these fund-raisers are supposed to be reported as income, the cost to companies of buying the tickets is treated as a business expense rather than a political contribution, thereby providing a loophole for the legal ceiling on corporate contributions.[29] Moreover, under the law, profits from a politician's sale or purchase of stocks at bargain prices, prior to their listing on the stock exchange (e.g., as happened in the Recruit case), are regarded not as political contributions but as individual income. Hence, the politicians are not required to report them.[30]

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[25] Asano, *supra* note 23, at 50-51; Baerwald, *supra* note 6, at 834-35.

[26] G. L. Curtis, *The Japanese Way of Politics* 176 (New York, 1988).

[27] Hrebenar, *supra* note 22, at 56. The author notes that the 1984 total was the second-highest recorded up to that point; it represented "a 20.7 percent decline from when three major elections set the [then] all-time record of 147.2 billion yen."

[28] Washisaka, *supra* note 19, at 57.

[29] Curtis, *supra* note 26, at 186. *See also Asahi shinbun*, July 30, 1988.

[30] Asano, *supra* note 23, at 55. *See also Asahi shinbun*, Sept. 7, 1988.

The government has not adopted any auditing procedures for political contributions and campaign contributions. The Minister of Home Affairs and the Election Management Commission are allowed to examine the financial reports presented to them, but penalties imposed on false reports are inadequate. Nor is there any way for them to look into whether or not contributions have been fully reported. While the treasurer of a political organization will be punished for acts that fail to comply with the Political Funds Control Law stipulations, a candidate will not be, unless (with certain exceptions) he has made contributions to his own electoral district.

Although the revised Public Office Election Law of 1975 increased indirect public funding of election campaigns, this failed to reduce the high cost of the campaigns. There was a movement to adopt a system of public management of elections initiated by former Socialist Premier Katayama (1947-1948) and a member of the House of Councillors. Their plan aimed at reducing campaign costs, insuring fair elections, and combatting political corruption. The entire cost of a campaign was to be funded by the government, augmented by contributions collected in advance from each candidate. In 1979, former Prime Minister Miki proposed a Special Measures Law for Cleaning Up Elections. Instead of passing this bill, the government revised the Public Office Election Law in 1981.[31]

The outline of political reform announced on May 19, 1989 (and revised on December 25, 1990), by the LDP prohibits political contribution funds from being used for chancy ventures, such as the purchase of stocks.[32] The bill to amend the Political Funds Control Law proposed by the LDP also provides, in addition to the introduction of the statutory limit on party earnings for the first time, that any political organization and any candidate must refrain from inviting public distrust by using political contributions for risky transactions.[33] It is expected that a future revision of the law will focus on these two major issues in order to cope with the problem of the contribution of huge amounts of political funds to exert special political influence, as evidenced by the Recruit case.

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[31] *Gendai yogo no kiso chishiki* (Fundamental Knowledge of Modern Terminology) 334 (Tokyo, 1990).

[32] *Asahi shinbun*, Feb. 10, 1991.

[33] 13 *Chosa* 279 (1989); *see also Asahi shinbun*, Dec. 26, 1990.

MALAYSIA

I. Introduction

The Malaysian system of government is a parliamentary democracy. The head of the government is the prime minister, who is appointed from the majority party in the bi-cameral Parliament. The Parliament consists of a 69-member Senate (*Dewan Negara*), 43 of whose members are appointed by the head of state and the other 26 elected by the state legislatures, and a 180-member House of Representatives (*Dewan Rakyat*), all of whose members are elected by universal adult suffrage. The titular head of state is a constitutional monarch, the *Yang-di Pertuan Agong* or paramount ruler, who is elected for a five-year term from among themselves by the hereditary rulers of nine of the thirteen constituent states making up the Federation of Malaysia.

Elections to the House of Representatives are technically to take place every five years, but from time to time they have been held sooner due to the dissolution of Parliament before the scheduled date. National elections have been held eight times since the country achieved independence from the British in 1957, most recently in 1990.

The political parties that have participated in these elections have for the most part been formed along communal lines.[1] The Malaysian political situation has been characterized as having two outstanding features; "one, Malaysia is essentially, what may be called, a bi-racial society; and two, one of the two main ethnic groups in the country is indigenous and the other immigrant."[2] The population consists of large communities of indigenous Malays and immigrant Chinese, together with many other smaller communities, including Indians and other ethnic groups.[3]

In the Malay community, the dominant political party has long been the United Malays National Organization (UMNO), led by Tungku Abdul Rahman, Prime Minister of the country from 1955 to 1970. The Chinese community generally supports the Malaysian Chinese Association (MCA) and the Indian community the Malaysian Indian Congress (MIC). The Alliance, a coalition of three communal parties (UMNO, MCA, and MIC), was formed in the early 1950s and handily won the elections of 1955, 1959, and 1964. In 1969, facing opposition, the coalition was expanded.

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[1] H. Crouch, "From Alliance to Barisan Nasional," *in Malaysian Politics and the 1978 Election*, 1 (Kuala Lumpur, 1980. H. Crouch, K. H. Lee, M. Ong, *eds.*). According to Crouch, "Malaysian politics have always been communal politics."

[2] R.K. Vasil, *Ethnic Politics in Malaysia* 2 (New Delhi, 1980).

[3] The 1980 census showed the population of Peninsular Malaysia to be composed of roughly 56% Malay, 33% Chinese, 10% Indian, and about one percent of Eurasians and other small nationality groups. In Sabah and Sarawak states, on the island of Borneo, the majority of the population consisted of such indigenous peoples as Kadazan, Murut, Iban, and Melanu, with substantial numbers (16 to 30 percent) of Malays and Chinese. *Malaysia: A Country Study* 69 (Washington, D.C., 1984. F. M. Bunge, *ed.*).

By 1974, now known as the Barisan Nasional (BN) or National Front encompassed nine political parties, with the number growing to eleven by the time the 1974 election came around.[4]

In the most recent elections of October 1990, the incumbent Barisan Nasional coalition was composed of eleven parties, while the opposition was a loose alliance of ten. Running under the Barisan Nasional banner were candidates not only from UMNO (86), MCA (32), and MIC (6), but also from parties such as Gerakan (9), which was founded as a multiracial party in 1968 but which had in course of time become closely identified with the Chinese community. Gerakan fielded six candidates. Confronting the BN in the national election was the opposition coalition, one of the main components of which was Semangat '46, the standard-bearer of the opposition and a breakaway party from UMNO. It was led by Razaleigh Hamzah, a longtime political rival of the incumbent Prime Minister Mahathir bin Mohamad when both had been in UMNO. Semangat '46 contested sixty-one seats but won only eight. The DAP (Democratic Action Party), the biggest non-Malay opposition party, won in twenty of the fifty-seven seats that it contested. The PAS (Parti Islam Sa-Malaysia) contested thirty seats but won only six. The PBS (Parti Bersatu Sabah), formerly part of BN but in 1990 defecting to the opposition coalition, won all fourteen of the seats that it contested.

The 1990 election results thus proved that in Malaysia the opposition was still not capable of initiating a true two-party system. Even though this year the opposition had for the first time been able to present an alternative to the incumbent party, yet as Razaleigh Hamzah said, in terms of seats won, the combined opposition had "clearly performed below expectation [although it had] made a very significant contribution to the development of democracy in this country."[5]

II. Regulatory Statutes for Elections

The law governing the holding of elections in Malaysia is contained in the Constitution of Malaysia, the Elections Act of 1958, the Elections (Registration of Electors) Regulations of 1971, the Elections (Conduct of Elections) Regulations of 1981, the Election Offenses Act of 1954, and the Election Petition Rules of 1954. There have also been a number of court cases that have involved various provisions of the above laws and regulations.

It should in addition be noted that political parties are governed in Malaysia by the Societies Act of 1966, which was amended in 1981 to incorporate a definition of *political party*. Thus, § 2 of the Act as amended defines *political party* to include a society which makes provision for the society to participate, through its candidates, in elections to the *Dewan Rakyat* or to a *Dewan Undangan Negeri* (State Legislative Assembly), or to a local authority, or makes provision for it to seek the appointment or election of a person proposed or supported by it to the Dewan

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[4] H. Crouch, *Malaysia's 1982 General Election* 4 (Singapore, Institute of Southeast Asian Studies, 1982). Nevertheless, even in 1977 the complaint was voiced that "there has not been a multi-ethnic organization committed completely to this goal of developing consciousness among all communities based on values acceptable to all communities." *Whither Democracy: An Analysis of the Malaysian Experience* 59 (Kuala Lumpur, 1978. Y. K. Khoo, *ed.*).

[5] S. Aznam, "Price of Victory," *Far Eastern Economic Review* 10 (Nov. 1, 1990).

Negara. A political party is also a society which carries on any activity or pursues any objective that involves the society's participation -- through its candidates -- in elections to the *Dewan Rakyat*, a *Dewan Undangan Negara*, or to a local authority, or which involves the society seeking the appointment or election of a person proposed or supported by it to the *Dewan Negara*. Thus any political party that fields members as candidates in national elections for seats in the *Dewan Rakyat* will be bound by the Societies Act and any rules and regulations issued thereunder.[6]

By making political parties subject to the Societies Act, the Government is able to exercise a measure of control over them. As societies, they are required to register with the Registrar of Societies, and to submit copies of, *inter alia*, their rules, any amendments to their rules, and lists of their office-bearers. They must report the number of members present in Malaysia and submit yearly financial accounts. They are subject to being refused registration, as well as to having their registration cancelled, and to being declared unlawful. The controversial amendment in 1981 of the 1966 Act to include political parties within the scope of the Act's rules and regulations was seen by some as a curb on "any comment by any society on Government politics and activities."[7] The Societies Act will be further discussed below in connection with foreign contributions to election campaigns.

III. Government Funding

A. Direct Funding

There is no direct funding of political campaigns, in that the government does not provide any funds directly to individual political candidates or individual political parties. However, government funds, or taxpayers' money, is spent directly on different aspects of the national elections, including the election campaigns.

The Malaysian Constitution, in Part VIII, entitled "Elections" and consisting of articles 113 through 120, as well as in the Thirteenth Schedule, contains a number of provisions regarding elections. Article 113(1) stipulates that there is to be an Election Commission, charged with conducting elections to the lower house as well as to the state legislative assemblies.[8] This Commission, whose chairman and three other members are paid salaries by the government under article 114(5) of the Constitution, thus oversees both national and state elections. The Commission is also charged with preparing and revising the electoral rolls. The expenses of the government on the various activities of the Election Commission are regular and permanent expenses.

In addition to the regular and permanent expenses incurred on account of the Election Commission, a number of *ad hoc* expenditures are also incurred by the Commission. Thus, for each election, the Commission appoints a number of Returning Officers and Assistant Returning

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[6] *Societies Act, 1986 and Regulations 1984* 6-7 (Kuala Lumpur, 1990).

[7] C.K. Tan, *Without Fear or Favour* 14 (Singapore, 1984).

[8] "Malaysia" *in* A. Blaustein & G. Flanz, ed. *The Constitutions of the Countries of the World* 103 (Dobbs Ferry, N.Y., 1990).

Officers, as well other polling staff. The majority of these are government or quasi-government employees, although some may be hired from the private sector. For example, for the 1978 elections (both national and state), 430 election assistants, 7,804 presiding officers, 28,935 polling clerks, 1,032 polling clerks to take care of postal voting (voting through the mails), 9,551 counting clerks, 369 ushers, and 1,168 guides were appointed, in addition to the Returning Officers and Assistant Returning Officers, by the Election Commission. A certain amount of funds is budgeted for election expenditures in the national budget, or Consolidated Fund, which includes expenses incurred for training the election staff, for preparing booklets for the use of the Returning Officers and other staff in the execution of their duties, the printing of ballot papers, and the like. The Government also, in advance of each national election day, conducts a publicity campaign to instill awareness among the voters about the importance of exercising their right to vote, and also to instruct them on voting procedures, making films which are shown by field units of the Information Department, distributing leaflets, and airing special songs composed for the purpose on radio and television.[9]

B. Indirect Funding

As both radio and television are under the complete control of the party forming the current administration, this might viewed as a kind of indirect subsidy to the political party in power, to the detriment of the opposition parties. In the 1990 elections, opposition parties are reported to have complained about limited access to and distorted coverage in the country's main newspapers, radio, and television, which "are mainly owned by or openly supportive of the National Front Government."[10] However, all political parties are given the opportunity to use the airwaves to publicize their various platforms.

For the 1982 elections, the government extended an offer of radio time to the opposition, but this offer was rejected because it was to be allotted in proportion to the distribution of seats in the previous parliament, which led the opposition to believe that the government candidates would get far more time than their own. Apparently no such offer was made with respect to television, "the news programmes of which were filled with ministers opening schools, temples, bridges, roads and virtually anything else that could be opened during the weeks before the election."[11]

IV. Non-Government Funding by Residents

Campaign contributions to political parties are not prohibited. However, the main source of campaign funds appears to be the membership dues paid by the members of the parties. In discussing the 1969 elections, von Vorys pointed out that the UMNO had over 340,000 members

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[9] *See, e.g.*, the reports on the general elections of 1978 and 1982, prepared by the Election Commission.

[10] Kyodo News Service dispatch, Oct. 23, 1990 (NEXIS, Current file).

[11] Crouch, *supra* note 4, at 38.

in 6,000 district branches who had paid a M$1 annual fee.[12] The MIC, at the same time, had 311 branches with a total paid membership of 75,000, although it is not mentioned what the membership dues were.[13] In the DAP, on the other hand, the candidates not only contributed to the party's trust fund but also paid their own deposits and financed their own campaigns. In 1969 membership in all of West Malaysia was reported to be only 1,376, organized into 63 branches, and the party chairman reportedly donated M$15,000 while another member donated M$21,000.[14]

Each candidate is restricted to the ceilings placed upon election expenses by § 19 of the Election Offenses Act. This section imposes a limit on the amount that each candidate may spend, *viz*, M$50,000 in the case of a candidate standing for election to the *Dewan Rakyat*, M$30,000 in the case of a candidate standing for election to a state legislative assembly.[15] However, as no such ceiling is imposed on how much the party itself may spend on campaign expenses, there are obviously ways in which funds can be directed to accomplish the same purpose as would have been accomplished by expenditures made by the candidates themselves.

It can probably be assumed that such expenditures are made during each election. An article in a Bangkok newspaper, citing what the author calls "a radical [Malaysian] monthly news magazine", quotes the magazine as claiming that the then forthcoming 1990 elections in Malaysia might be the most expensive one in the country's 33-year history. The news magazine is also quoted as saying that in the villages of Malaysia, a vote would cost from M$20 to M$25.[16] Fence-sitters could, it said, be wooed with cash, and the UMNO had campaigned on a family-to-family basis, paying out about M$2,000 to M$3,000 per household, or so the article claimed.[17]

V. Regulation of Foreign Campaign Contributions

Indonesian agents reportedly made substantial contributions to political parties for campaign expenses in the 1964 elections, since these elections took place shortly after the 1963 "Crush

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[12] K. von Vorys, *Democracy Without Consensus* 253 (Princeton, N.J., 1975).

[13] *Id.* at 256.

[14] *Id.* at 260.

[15] One Malaysian *ringgit* or dollar is equivalent to 37 cents U.S.; one U.S. dollar is equivalent to Malaysian $2.70.

[16] Article in *The Rocket* cited by S. Inbaraj, "Money Politics in Malaysian Poll," Foreign Broadcast Information Service, *Daily Report: East Asia*, Oct. 16, 1990, at 48-49.

[17] *Id.* at 49.

Malaysia" policy was launched.[18] The Pan Malayan Islamic Party (PMIP) was accused of receiving money from Indonesia during the same campaign.[19]

The 1981 amendment of the Societies Act has been cited as being an attempt by the Government, which is to say, the party in power, to curb the inflow of foreign money to influence Malaysian politics.[20] There are no provisions in the election laws and regulations that would prevent any political party or political candidate from accepting foreign contributions for their campaigns, and none that could be construed as putting limitations on contributions made by foreign individuals or foreign companies or organization, or as being registration requirements regarding the source of funding. In fact, the only such provisions of this nature were inserted by amendment into the Societies Act, and these provisions were later struck down by the amendment to the act promulgated in the form of the Societies (Amendment) Act of 1983.

Thus, § 18G of the Societies Act as amended by the 1981 Amending Act expressly prohibited a society which is denoted as a political society from directly or indirectly requesting, obtaining, receiving, or accepting, or even attempting to do any of the preceding, with respect to any money, moveable or immoveable property of any description, or any pecuniary benefit or advantage, from, or originating from, any person ordinarily resident outside Malaysia, or any organization which is not one established in Malaysia under a written law, or from any government of, or any agency of any government or governmental or other authority in any country, territory or place outside Malaysia.[21]

VI. Auditing Procedures

Provisions on auditing procedures of expenses related to election campaigns are to be found in the Election Offenses Act and the Societies Act, which as has been indicated earlier, also governs political parties in many areas of their activities.

Section 23 of the Election Offenses Act deals with returns and declarations that must be filed by candidates with respect to their election expenses. Sub-section (1) of this section stipulates that within thirty-one days after the date of the publication of election results in the official gazette, the election agent of each candidate must deposit with the State Election Officer a true

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[18] G.P. Means, *Malaysian Politics* 340 (London, 1970). Means cites a Government White Paper reporting the following amounts and the political parties receiving them: M$145,000 (Parti Rakyat Malaya), M$105,000 (PMIP), M$15,000 (Parti Rakyat Singapore), M$6,000 (National Convention Party), and M$5,000 (Labour Party).

[19] *Supra* note 14, at 157.

[20] S. Lal, *Malaysian Democracy: An Indian Perspective* 13 (New Delhi, 1982).

[21] Section 18G of the Societies Act of 1966, inserted by the 1981 Societies (Amendment) Act, Act A515, and deleted by the 1983 Societies (Amending) Act, Act A557.

return, referred to as the "return respecting election expenses," in the prescribed form, which is Form B in the First Schedule to the Act.[22]

The return respecting election expenses must contain detailed statements, with respect to the candidate concerned, of any disputed claims that the agent is aware of all unpaid claims, all money, securities and other valuable consideration received by or promised to the election agent from or by a candidate or anyone else for the purpose of election expenses, naming those from whom the money was received or may have been promised, and showing whether each sum was received as a contribution, as a loan, as a deposit, or otherwise. The return must also show the amount of expenses incurred by persons authorized by the election agent. It must be signed by the election agent and must also be accompanied by a statement from the candidate and the election agent, on Forms C and D, respectively, contained in the First Schedule to the Act. It must have been attested before either the Chairman or a member of the Election Commission, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, or the State Elections Officer.[23] Political parties, as registered societies under the Societies Act, are also required by § 26 of this Act to comply with certain auditing procedures. Sub-section (1) of section 26 says that every registered society is, at least once a year, to submit its accounts for audit by an auditor approved generally or for any particular audit by the Registrar of Societies. Under the provisions of sub-section (2), the auditor is to have access to all the books and accounts of the registered society and is to examine the annual return required by the Act. The auditor is also to verify the annual return with the accounts and vouchers relating to them, and then either sign the return as found by him to be correct, duly vouched and in accordance with law and the rules of the registered society or else specially report to the society in what respects he has found it to be incorrect, unvouched, or not in accordance with law.[24]

VII. Penalties for Campaign Financing Offenses

Penalties for irregularities committed with regard to the financing of political campaigns are specified in the various election laws and regulations.

The Election Offenses Act of 1954, which has as its stated aim "to prevent electoral offenses and corrupt and illegal practices at elections; to provide for the appointment of election agents and to control election expenses; and to provide for election petitions," deals with electoral offenses in its Part II and with corrupt practices in its Part III.[25] The enumeration of electoral offenses includes none that involves accepting campaign contributions. Corrupt practices as described in the Act generally refer to such things as treating and bribery. Treating includes the practice of influencing a person to give or to refrain from giving his vote, through payment of

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[22] *Malaysia: Election Laws* 120-121 (Kuala Lumpur, 1986).

[23] *Id.* at 121.

[24] *Supra* note 6, at 37.

[25] *Id.* at 102-111.

money or the giving of food or drink and the like.[26] Bribery, dealt with in the same part of the Act, deals with such practices as giving or promising a voter money or valuable consideration in order to induce him to vote or to refrain from voting. It also includes such acts as advancing or paying money to a person with the intent that such money or any part thereof is to be expended in bribery at an election.[27]

Part IV of the Election Offenses Act pertains to the nomination of election agents, election expenses, and illegal practices. According to § 12 of the Act, each candidate must name his agent, although a candidate is permitted to name himself as election agent. A candidate acting as his own election agent will then be bound by the provisions of the Act both as a candidate and as an election agent.[28] Section 15 stipulates that no payments, advances or deposits are to be made by a candidate at an election except through his agent in respect of expenses incurred in respect of the conduct or management of the election. All money provided by anyone other than the candidate for expenses incurred in respect of the election, whether as a gift, a loan, advance, or deposit, is to be paid to the candidate or his election agent.[29]

Section 15A specifies that certain election expenses are only to be incurred by the candidate, by his election agent, or by persons authorized for the purpose. Included among these expenses are those incurred on account of holding public meetings, of printing advertisements or publications, of presenting to the electors the candidate or his views or the extent or nature of his backing. This section is not to be applied so as to restrict publication in a newspaper or other periodical of any matter related to the election, nor to expenses incurred in travelling or in living away from home or to similar personal expenses.[30]

A time limit of fourteen days from the date of publication of the election result in the official gazette is laid down in § 16, within which claims for expenses incurred on account of the election must be sent to the election agent.[31]

Knowingly acting in contravention of § 19, which imposes a limit on the amount that a candidate may spend in respect of an election, as has already been mentioned, constitutes an illegal practice.[32] Section 27(1) provides that anyone committing this illegal practice, or any other practice defined as being an illegal practice under this Act, will be liable upon conviction to a fine of M$500 and, subject to a specific provision to the contrary in a written law relating to elections, will

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[26] *Id.* at 107-108.

[27] *Id.* at 108-110.

[28] *Supra* note 24, at 111.

[29] *Id.* at 114.

[30] *Id.* at 115.

[31] *Id.* at 116.

[32] *Supra* note 24, at 118.

become incapable of being registered or listed as an elector or of voting at any election under this Act or of being elected at any election, until the expiration of a five-year period from the date of the conviction.[33]

VIII. Conclusion

There has been very little criticism of the way in which national elections in Malaysia are conducted and financed. On the contrary, the whole election process has been praised, and the majority view seems to be that for a country that only achieved independence less than forty years ago, it is admirable that a truly democratic political system has evolved. No restraints on popular political participation are imposed on the voters of Malaysia, and in the last elections of 1990, there was at last what could be called a real contest, taking place in a fashion described by a team of British Commonwealth observers as "free and in accordance with Malaysian law and circumstance."[34]

However, it cannot be denied that "Malaysian elections are heavily weighted against the opposition ... partly due to the nature and dynamics of the community-based party system."[35] Another factor that would act against an opposition victory is the electoral system, which gives an advantage to the party that can win in Malay-majority areas (either on its own or together with other parties), which in practice means the UMNO.[36]

Among the other factors working against opposition political parties were the shortness of the campaign period (ten days), and the ban on open-air public rallies which restricted parties to holding indoor sessions known as *ceramahs* that could only involve limited numbers of participants. As has already been mentioned, opposition access to the mass media was restricted. However, the abuse of campaign financing has not been an issue since the 1960s accusations of contributions from Indonesia to certain political parties.

Thus there will probably be no movement or push towards more legislation to control campaign expenditures. Until the election comes where a truly viable opposition can contest the candidates being fielded by the government party, campaign financing will not play a large role or constitute a controversial issue.

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[33] *Id.* at 126.

[34] Von Vorys, *supra* note 12.

[35] Crouch, *supra* note 4, at 35.

[36] Crouch, *supra* note 4, at 36.

MEXICO

I. Introduction

A. Political Structure

The Mexican legislature or Congress consists of two chambers, the Chamber of Deputies and the Senate. All deputies are elected every three years. There are 500 deputies in all, of whom 300 are elected in single-member constituencies and 200 are elected by proportional representation based on listings by electoral regions. There are two senators for each state and two for the federal district, making a total of 64. Half the senate is elected every three years in direct elections. The president is the chief executive and is directly elected every six years for one term only.[1]

B. Party System

After several decades of political turbulence that ended with what is known as The Revolution, a new federal Constitution was enacted in 1917. It redefined the bill of rights, reorganized the government structure and set forth general principles in response to and reflection of alleged popular demands. However, it did not settle the conflicts between various insurgent armed groups and armed violence continued throughout the following years. Efforts were made by individual leaders to end the chaotic situation, but it was not until 1929 that an agreement was reached and a new political system was devised and set in place.[2]

Mexican scholars consider that the agreement produced a *sui generis* political system that has surprised and confused foreign observers. To understand it, they claim, a thorough study of the idiosyncracies of the Mexican people is required. The system has been described as ideologically based on the dominant party doctrine, of European inspiration, and brought about by three fundamental local political experiences: the national independence (1810), the *Reform* (1860's), and the *Revolution* (1910)-1917.[3]

Political scientists consider dominant party systems to be a distinct category of political system, analytically distinct from both single-party and multi-party systems. Dominant party systems have many political parties and hold regular elections, but one party always wins and thoroughly dominates political life. Prime examples, apart from Mexico, are postwar Japan and post-independence Singapore.

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[1] *Constitución Politica de los Estados Unidos Mexicanos* (Constitution of the United States of Mexico, (Constitution of 1917, as amended)) (Mexico, D.F., 1988).

[2] S. Leon, et al., *De Fuerzas Politicas y Partidos Politicos* 28-37 (Folios Universitarios. Mexico, 1988).

[3] F. Berlin-Valenzuela, *Teoria y Praxis Politica-Electoral* 87 (Editorial Porrua, S.A. Mexico, 1983).

In Mexico, the system is centered on the Institutional Revolutionary Party (*Partido Institucional Revolucionario*) more commonly known as PRI, which is the dominant party. It emerged in 1929 with the name of National Revolutionary Party (*Partido Nacional Revolucionario*) in an attempt to unify the mutually hostile revolutionary factions of that time. These were groups capable of putting actual fighting forces into the field. The alliance agreed upon between these contending groups was not simply a political one but, more importantly, a virtual cease-fire agreement. It was viewed as the only realistic way to secure political stability at the time.[4]

The current designation of Institutional Revolutionary Party was adopted in 1946, and it claims to actually be a federation of three sectors of the Mexican political forces: military, labor and agrarian.[5] This coalition of forces has managed to dominate the electoral process and has remained in power for more than sixty years. As a reaction to the integration of the dominant forces, the remaining political minorities organized their own parties for the representation and protection of their interests. Such opposition parties have been permitted to exist and to contest elections. Thus, the National Action Party (PAN) was founded in 1939, the Socialist Popular Party (PPS) in 1948, and the Authentic Party of the Mexican Revolution (PARM) in 1959.[6]

Since 1929 Mexico has undergone substantial economic and social change, and such changes have affected the political structure. According to Mexican sources, it is apparent that population growth, accelerated economic development, and the modernizing-revolutionary actions, are among others, responsible for a significant change in the political environment of the country. Today's Mexico has an increasingly pluralistic society whose citizens are demanding a more open access to power in opposition to the closed and monopolistic system practiced for so many decades.[7]

The current trend has been demonstrated by the results of the last election (1988) in which, even though the presidential candidate supported by PRI prevailed once more, a candidate stated that the "PRI's days as practically the only party are over" and that the PRI will have to learn to operate in a competitive environment. The elected president's statement was of course based fundamentally on the election statistics. According to PRI estimates, 50 percent of eligible voters turned out, but a private polling specialist estimated only a 35 percent turnout, with the electorate closely divided. The PRI presidential candidate won only 51 percent of the votes.[8]

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[4] *Political Systems of Latin America* 9-10 (Martin C. Needler, Ed., 1964).

[5] S. Leon, *supra* note 2, at 88.

[6] *Id.*

[7] F. Berlin-Valenzuela, *Teoria y Praxis. Politica Electoral* 89-92 (Editorial Porrua, 1983).

[8] Political Postcards *in Campaigns & Elections* 27 (C. & E. Incorporated, May/June 1989).

II. Government Funding

A. Direct Funding

The current statute on government funding of political campaigns is the Federal Code of Electoral Institutions and Procedures enacted on August 14, 1990 (hereinafter the Code).[9] It provides that all national political parties are entitled to public financing of their activities, in addition to their revenues from membership fees and organizations, independent of the other prerogatives granted by the Code. These provisions may be summarized as follows.

The General Council of the Federal Electoral Institute, based on the studies submitted by its Director General, will determine the minimum cost of campaigning for a deputy and for a senator. This figure is then combined with the candidates' share of the vote and an amount calculated for each party, to give a sum reflecting the party's share of vote and the number of its representatives in the legislature. This calculation will only take into account those candidates of political parties who have retained their registration with the Federal Electoral Institute.

The funding will be determined after the election has been qualified or verified by the Electoral Colleges of the respective Chambers (House and Senate). Parties which did not obtain more than 1.5 percent of the total ballot or cast votes are not entitled to public financial support, even if some of their candidates were elected.[10]

Political Parties will receive the funds within the three years following the election. Within the first year they will receive twenty percent of the total; the second year, thirty percent; and the remaining fifty percent within the third year, all in accordance with the provisions set forth to that effect in the National Budget. The second and third annual installments may be increased by the agreement of the General Council as deemed necessary. Parties are also entitled to an additional ten percent of the assigned total amount to finance activities considered to be in the public interest. These amounts will also be transferred in annual installments similar to the preceding.

According to the sources cited above, public funds do not appear to be available to the individual candidates themselves. The text of the Code indicates clearly that funds for financing political activities, that is other activities besides electoral campaigns, are to be provided.

The use of such public funds is confined to the activities assigned and legitimately recognized as proper by both the Code and the approved party's charter. These two sources are rather detailed. Furthermore, individual candidates are not actually independent political actors. They represent their party and are sponsored by it. Any registered political party is entitled to report irregularities incurred by another to the General Council of the Federal Electoral Institute

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[9] *Diario Oficial*, (D.O. official gazette) August 15, 1990. The reader must bear in mind that this Code did not govern the last elections of 1988 and that its provisions have not been tested through a full electoral process as yet.

[10] *Id.* art. 49(d) III, 2.

and request that investigations be conducted based on sufficient evidence.[11] There are, however, areas of the Code that are not very clear including the question of whether investment of such funds in revenue-generating activities such as raffles, fairs and other festive events authorized thereby is currently legitimate when specifically done in support of campaigns. Due to the relatively recent enactment of the Code and the rapidly changing political environment, the answer to this and other questions is not as clear as under the similar provisions of the previous statue. Finally, the Code establishes a ceiling for public financing applicable to the category of public interest activities. The General Council may not authorize support for more than fifty percent of the verified annual expenditures for this category.[12]

B. Indirect Funding

Because the transfer of public funds is not specifically targeted for political campaigning alone but rather for a host of other political activities as well, it may be stated that these funds may be used within the limits of the Code and the parties' charters. However, the fact that other profit-making activities may be financed with these funds means that they may be considered to have an indirect character as well. That is, campaign financing may eventually amount to a sum larger than originally assigned, if additional funds are generated within the legitimate confines of the Code.

Transportation of voters to and from the polls does not appear specifically barred by either the Code or any other statute. However, to do so in violation of other provisions of the Code, such as forced transport or in conjunction with civil or political misconduct otherwise penalized under the law, must be considered according to the specific circumstances of each case. In such cases, grants of public funds may be withheld.

For a political party to retain its legal standing, it is obligated to publish and distribute at least one monthly journal of general information or newsletter and one quarterly journal of a theoretical character. Parties are also obligated, during the time allotted, to publish and distribute the electoral platform upon which their candidates will launch their campaigns in their geographical areas of influence.[13] These activities may be supported either partially or totally with public funds, depending on the circumstances.

The distribution of the above material and other information allowed under the Code is also subsidized by postal franking privileges throughout the national territory. Items sent under franking are expected to be processed in accordance with specific mailing standards provided for by the Code.[14]

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[11] Code, arts. 22-32 and 36-56.

[12] *Id.* art. 49(d) II.

[13] *Id.* art. 38, 1, h) and j).

[14] *Id.* arts. 53, 54 and 55.

The Code also grants national registered political parties the right to proportionate access to the public telegraphic, radio and television media for the broadcasting of their ideological principles, programs for political action, and electoral platforms.[15] The Executive Board of Prerogatives and Political Parties (*Direccion Ejecutiva de Prerrogativas y Partidos Politicos*) of the Federal Electoral Institute is in charge of the broadcasting of radio and television programs of political parties as well as of the corresponding time scheduling.[16]

Each political party is entitled to a share of fifteen minutes a month of the total time reserved for the federal government on each radio frequency and television channel. This basic monthly fifteen minutes may be increased during electoral periods to an additional time proportionate to a party's electoral strength. The parties must use at least half of the time assigned to broadcast their electoral platform. They may also request that additional regional broadcasting time be authorized, provided that such time does not exceed fifty percent of the total time assigned to them for programs of national coverage. Finally, political parties are also entitled to a broadcasting time allowance to jointly present special programs as established and coordinated by the Executive Board of Prerogatives and Political Parties. These special programs must be broadcast by radio and television twice a month.

There is no apparent reference in the Code to this access to the media being free of charge. In fact, one specific provision prescribes that the General Board of Directors of the Federal Electoral Institute must request from the Secretariat of Communications and Transportation, as and when it becomes necessary, the rates to be charged by the radio and television concessionaires on the time segments to be dedicated under the terms of the Code. These rates may not be above those charged to commercial advertisers.

As far as fiscal incentives are concerned, political parties are exempted from the following taxes:[17]

- on raffles and lotteries legally authorized; fairs, festivals and other taxed events planned with the purpose of raising funds for the financing of legitimate activities;

- on income, when the taxable amount is generated by the transfer of real estate which was acquired for the fulfillment of their objectives, as well as on income from contributions (*donaciones*) in currency or in kind;

- on sales of printed materials published for the distribution of their political principles, programs, charter, general propaganda, as well as on the use of audiovisual means and equipment; and

- any other exemptions prescribed by applicable laws.

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[15] *Id.* art. 42.

[16] *Id.* extracted from Title III, art. 41-48.

[17] *Id.* extracted from arts. 50-52.

There are, however, specific exceptions to the above. These are:

- added state taxes and fees on real property, its subdivisions, consolidations, transfers and improvements, as well as those taxes based on changes in the value of real estate; and

- state and Municipal taxes and fees levied on the use of public services.

III. Non-Government Funding

A. Funding from Domestic Sources

It appears from the provisions of the Code governing tax exemptions and cited above that donations by Mexicans to Mexican political parties are allowed; and, as will be stated *infra*, donations by foreign persons or entities are barred. There are no apparent specific references in the Code to either limitations or prohibitions for Mexican private persons or corporations making such contributions. However, some other general limitations do exist under Mexican law concerning limitations on the ability of private individuals or corporations to donate to the detriment of creditors, depending on the circumstances.[18]

No direct references have been found to anything resembling the United States political action committees (PAC) or to limitations on campaign expenditures. In this regard, the Mexican electoral tradition, as described by national scholars and observers of politics, is one in which access to the media, for instance, is not actually decisive within the dominant party system. Additionally, the extensive regulation of campaigning may have a significant restraining influence on excessive or disproportionate funding. However, with the emergence of political pluralism and the expected increase in the level of competition, it would not be surprising to see future legislative initiatives aiming at controlling such expenditures in a more effective manner.

IV. Regulation of Foreign Contributions

Political contributions from foreign sources are directly addressed by the Code. Its provisions implement the principle set forth in the Federal Constitution concerning the role of foreigners in the national political scene. It provides that "Foreigners may not, in any way, intermeddle in the political affairs of the nation."[19] This is a direct and definite impediment. In pursuance of the preceding, the Code prescribes that "The declaration of principles (of a party's charter) must include, at least, the following statements: c) The obligation not to accept a pact or agreement that will subject or subordinate the party to any international organization, or make it dependent on foreign entities or political parties. Likewise, the party must not solicit, and must reject if offered, any and all kinds of economic, political and propagandistic support generated

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[18] *Ley de Quiebras y Suspension de Pagos* in *Codigo de Comercio y Leyes Complementarias* (48th ed., 1987).

[19] *Supra* note 1.

abroad or from religious denominations and sects."[20] The Code provides further that "political parties are obligated to function and conduct themselves without dependence or subordination to foreign persons or corporations, international organizations or entities, or religious ministries."[21] Both provisions, again, are clear and direct as regards the subject in question. It may be stated, as a matter of general principle, that contributions by foreigners for political purposes are not allowed under current provisions of Mexican law.

Even though the argument could be made that contributions, foreign or domestic, do not necessarily imply subordination or dependence, the Code does not allow for such speculation when foreigners are involved. One may wonder what the legal standing would be of Mexican private individuals or corporations who, having received gifts or donations from abroad, proceed on their own initiative to donate funds to a political party.

V. Penalties for Irregularities

The first and most obvious offense is that indicated by the Constitution and the Code concerning foreign interference in national politics in general and contributions in particular. In such cases, the Code provides that the Federal Electoral Institute acquires jurisdiction. If the foreigner(s) involved reside in Mexican territory and are found liable, the Institute must serve notice of its findings and decisions to the Secretariat of Government (*Secretaria de Gobernacion*), the agency entrusted with enforcing the constitutional provision in this regard. The prescribed penalty in these cases is deportation.[22] If the foreigner(s) reside abroad, the notice is served to the Secretariat of Foreign Relations to do whatever it deems proper under the circumstances. In all other cases, jurisdiction to hear and decide cases concerning the electoral process is entrusted to the Federal Electoral Tribunal.[23]

Violations of the terms under which public financing was granted to political parties may subject the offender to a fine of from 50 to 5,000 times the national minimum daily wage.[24]

VI. Auditing Procedures

There are no specific provisions governing the auditing of campaign financing as such. However, the Code contains the procedural rules necessary to adjudicate any and all violations committed against the provisions therein. These certainly include cases concerning illegitimate application of funds for political campaign purposes or illegitimate campaign practices supported by public funds. Auditing may, therefore, result as a result of judicial determination.

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[20] Code, art. 25, 1, n).

[21] *Id.* art. 38, 1, n).

[22] Code, art. 340.

[23] *Id.* art. 343.

[24] *Id.* art. 342.

VII. Conclusion

In consideration of all of the above, it may be stated that political campaigning in Mexico under the tradition of the dominant party system has not been as critical a part of the electoral process as it would have been in the case of campaigning in a more pluralistic and democratically organized society. It should be kept in mind, however, that the dominant party system appears to have been a rather effective political device to bring the long decades of armed violence to an end and to obtain the peace necessary for the establishment and development of more viable and durable civil institutions. Perhaps history will find the Mexican experience an acceptable transition from political chaos to a progressively stable pluralistic democracy. Then political campaign financing may become an issue for the citizens and their legislature to focus on in more detail than is presently the case.

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NETHERLANDS

I. Introduction

The Netherlands is a constitutional monarchy with a parliamentary system of government. The parliament in the Netherlands consists of two Chambers.[1]

The membership of the Second Chamber (Lower House of Parliament)--and of the provincial and municipal councils--is decided in direct elections normally held every four years. The membership of the First Chamber (Upper House of Parliament) is not elected directly but instead chosen by the members of the twelve provincial councils, in indirect elections held at four yearly intervals. The Second Chamber consists of 150 members, the First Chamber of 75 members.

The elections are held on the basis of proportional representation under which the distribution of seats among the parties or groups corresponds as closely as possible with the distribution of votes. For elections to the Second Chamber, the country is divided into districts which enables regional differences to be taken into account in the nomination of candidates by the parties. The Election Law provides regulations for election procedures for the parliament, provincial legislatures and the local councils. Voting is entirely by means of party or group lists, but each party or group may submit differing candidate lists in the individual districts. This does not contradict the principle of national proportionality. Voting is not mandatory and there is no law on political parties in the Netherlands.

On September 6, 1989, elections were held for the Second Chamber. The Christian Democratic Appeal (CDA) obtained 54 seats, the Labor Party (PvdA) 49 seats, the Peoples Party for Freedom and Democracy (VVD) 22 seats, the Democrats '66 (D'66) 12 seats, Green Left (*Groen Links*) 6 seats and the remaining 7 seats went to 4 small parties.

II. Government Funding

There are no provisions for state funding or subsidies to political parties, groups or candidates, with respect to campaign financing. The only form of indirect funding provided for by law is in the Media Law.[2] In the Netherlands there are three state television channels, which are shared between various public service broadcasting organizations. Under the Law, the Media Commissariat is authorized to allocate broadcasting time to political parties and groups which have one or more seats in the Second Chamber. In the period preceding an election, the Commissariat may allocate extra time to political parties and groups which have submitted a list of candidates in all electoral districts. The same applies to those parties or groups who participate in the

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[1] Constitution of the Kingdom of the Netherlands of February 17, 1983, *Staatsblad* (official law gazette of the Netherlands, Stb.) 70, as amended.

[2] Law of April 21, 1987, Stb. 249, as amended, art. 37.

Netherlands for the elections of the European Parliament. The broadcasts are of equal length and are made by the various parties in turn.

III. Funding by Residents

Dutch political parties are membership parties (that is, parties with a defined list of active members), but the Dutch population as a whole is not passionately desirous of taking part in them or in their political campaigns. Over 90 percent of the Dutch electorate belongs to no organized party.[3] Political parties obtain their money for election campaigns mainly from membership dues and special fund drives. Subscriptions and donations from individuals to parties are tax-deductible provided they comprise at least 1 percent but do not exceed 10 percent of a person's gross annual income.[4] Depending on the political orientation of a party, some contributions may come from business or industry. Donations made by private corporations are tax-deductible, but the minimum amount is fixed at 500 guilders (about $280) and the maximum at 6 percent of the total profit.[5] Contributions to parties from private companies are not, however, a common practice, and some parties have decided to restrict the number and type of donations they will accept in order to avoid the impression of being obligated to private interests.

In the absence of specific legislation, there are no restrictions on the amount contributed by either Dutch citizens and organizations or by foreign persons or groups.

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[3] E. van Raalte, *Het Nederlandse Parlement* 19 (6th ed. 's-Gravenhage, 1977).

[4] Income Tax Law, Law of December 18, 1964, Stb. 522, as amended, art. 47.

[5] Corporate Tax Law, Law of October 8, 1969, Stb. 445, as amended, art. 16.

SWEDEN

I. Introduction

A. Political Structure

Sweden is a constitutional monarchy with a parliamentary system of government. The King of Sweden is head of state but holds no political power. In Sweden, as in most parliamentary democracies, political power rests with the government, which is formed by members of parliament who have the support of a majority of the parliament. The government is directed by a cabinet, composed primarily of members of parliament and headed by a prime minister. The parliament (*Riksdag*) consists of one chamber of 349 members, each of whom has a designated substitute.[1]

B. Election System

Parliamentary elections are held every third year in the month of September. Suffrage is universal for all citizens aged eighteen and above. For parliamentary elections, the Realm is divided into twenty-eight constituencies. There are 310 permanent constituency seats and 39 adjustment seats. Permanent constituency seats are distributed among constituencies (electoral districts) in proportion to that constituency's share of the Realm's total number of eligible voters.[2] Voters cast their votes for a party rather than individual candidates.[3] The percentage of eligible voters participating in elections has traditionally been very high, averaging from eighty-five to ninety percent.[4]

Parliamentary seats are distributed among those political parties that have received at least four percent of the total national vote or twelve percent of the total vote in a single constituency. The permanent constituency seats are allocated to parties in proportion to their share of the votes in a given constituency. The adjustment seats are distributed among the parties that have received at least four percent of the total votes in such a manner that the distribution of all seats in Parliament, with the exception of those allocated to a party winning at least twelve percent of the vote in a single constituency, is proportional to the total number of votes cast in the Realm. Parliamentary seats are assigned to individual candidates nominated by the parties in accordance with the lists of candidates approved and published in accordance with the established procedures.[5]

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[1] Andrén, *Modern Swedish Government* (Stockholm, 1968).

[2] *Svensk Författningssamling* (SFS) (Instrument of Government) Chapter 3:6, 1974, as amended.

[3] *Id.* Ch. 3:1.

[4] Hadenius, On Sweden, 22-25 (Stockholm, Swedish Institute, 1990).

[5] *Id.* Chs. 3:7, 3:8.

There are no by-elections. If a seat becomes vacant through death, resignation, or the leave of absence granted to a member of parliament who joins the cabinet, it will be filled by the substitute, who is usually the candidate next in turn on the party list.[6] Political parties must register with the Central Authority and notify the Authority of the names of their candidates for election. The Central Authority prepares the lists of candidates for each party and constituency and prints the ballots. After the election, the Central Authority publishes the results, distributes parliamentary seats to the parties, and appoints the substitutes for each member of parliament.[7]

C. Political Parties

Five party groupings have been represented in Sweden's parliament since the introduction of universal suffrage in 1920. They are the Moderates (Conservatives), the Center (Agrarians), the Liberals, the Social Democrats, and the Communists. In 1988 a new party, the Greens, won enough votes to be represented in Parliament. The Social Democratic Party has governed Sweden for most of the period since 1939, with the electorate almost evenly split between the socialist bloc (Social Democrats and Communist) and the non-socialist parties.[8]

In the 1988 elections the Social Democrats won 43.2 percent of the votes and were assigned 156 (out of 349) parliamentary seats. The three non-socialist parties (Center, Liberals, and Moderates) between them won 41.9 percent of the vote and 152 parliamentary seats. The Communists took 5.8 percent of the vote and 21 seats. The Greens, who had run in two general elections in 1985 and 1982 but failed to achieve the 4 percent of the vote necessary for parliamentary representation, won 5.5 percent of the vote in 1988 and were assigned 20 seats. The socialist bloc of Social Democrats and Communists retained its majority in the Parliament.[9]

II. Government Funding

A. Direct Funding

The question of government funding for political parties was first raised in Sweden's parliament in the 1930s. At that time proposals focused on mandatory public control, accounting and auditing. In the 1950s the parties instituted their own public audits, which defused that issue. Discussion of public financing continued until 1965 when a general subsidy to political parties was introduced, going into effect on January 1, 1966.[10]

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[6] Särlvik, "Scandinavia" in *Democracy and Elections* 131 (Ed. Bogdanor, Cambridge, 1983).

[7] *Supra* note 2, ch. 5:1, ch. 14.

[8] *Supra* note 4, 22-25, 43-50.

[9] *See* Gilljan, *Rött, Blått, Grönt* (Stockholm 1990).

[10] Forsell, "Some Aspects of the Communal Party Subsidy in Sweden," paper presented at the 1973 meeting of the International Association of Political Scientists (Montreal).

In fiscal 1990-1991, the value of direct funding to political parties was Swedish Crowns 132.2 million (about U.S. $24 million).[11] The funds are paid to parties and not to individual candidates. The subsidy consists of party support and secretariat support. In conformity with the Law on State Support of Political Parties,[12] only parties that participate in parliamentary elections are entitled to funds. The amount of party support depends on a party's electoral performance in the last two elections. A party that has not received the 4 percent of the national vote necessary to be assigned parliamentary seats is still entitled to state funding, if it receives 2.5 percent of the total popular vote.[13]

Secretariat support consists of basic support and supplementary support. Parties receiving the threshold four percent of the total vote are entitled to basic support. Those with seats in parliament without having received four percent of the national vote (possible by winning at least twelve percent of the vote in any single constituency) receive basic support in proportion to their number of seats in parliament.[14] Supplementary support is also calculated according to the number of parliamentary seats held.[15]

There are no conditions attached to the use of the subsidies nor any mandatory public audit of their expenditure.[16]

B. Indirect Funding

Sweden has no regulations on transportation to the polls.

A number of laws provide for state subsidies to publications. Major daily newspapers are not directly owned by political parties, but each is affiliated with a party. The first law granting press subsidies was passed in 1969.[17] This only provided mailing discounts for daily newspapers. The more comprehensive Regulation on State Subsidies to Daily Newspapers was enacted in 1976 and modified in 1981.[18] It begins with a statement that the state has deemed it proper to subsidize the corporations that publish daily newspapers because of the role the newspapers play in informing the public and so strengthening democracy. The Regulation provides various types of

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[11] In early 1991, 5.5 Crowns equaled $1.00.

[12] SFS 1972:625.

[13] SFS 1972, § 3.

[14] *Id.* § 7.

[15] *Id.* § 8.

[16] Gidlund, *Partistöd,* 55-62, 185-230 (Umeå 1983).

[17] SFS 1969:581.

[18] SFS 1976:336; 1981:409.

subsidy such as a production subsidy, an establishment subsidy, a promotion subsidy and a cooperation subsidy. Discounts to facilitate distribution of newspapers are also provided.

A daily newspaper wishing to receive a state subsidy must apply to the Press Subsidy Board. In fiscal 1989-1990 the press subsidy totaled SEK 476 million (U.S. $86.5 million).[19]

A daily newspaper must have a subscription list of at least 2,000 to be eligible for a production subsidy.[20] The establishment subsidy is granted both to newspapers that publish one or two issues a week but plan to publish more often and to daily newspapers that have just begun to publish and can reasonably be expected to qualify for the production subsidy within a year. The promotion subsidy is granted to those newspapers that do not receive the production subsidy but face such economic difficulties that they need assistance. The cooperation subsidy is given to encourage papers to cooperate in technical matters and the sale of advertisements.[21]

The regulation on Subsidies to Journals Published by Organizations[22] provides for state subsidies to publications of various organizations, mainly headquartered in Sweden. The Regulation defines a *journal* as a periodical publication intended to serve the members of an organization and is, in large part, the official publication of the organization. The nature of the organization and its activities are of no concern to the state, so long as they are lawful. Hence religious, social, political, athletic, environmental or any other sort of organizations may have their publications subsidized. But, the organization must be affiliated with a political party that participates in the national elections, and the affiliation must be attested to by the publisher and the party. Subsidies to such journals are thus an indirect subsidy to political parties.

Radio and television broadcasting in Sweden are carried out by Swedish Radio-Television, originally a licensed monopoly similar to the British Broadcasting Corporation (BBC), and now a joint government-private body. Commercial advertising has never been permitted on Swedish radio or television, and this ban is extended to political advertising. The Radio Act of 1966 expressly prohibits commercial advertising.[23] Radio Sweden endeavors to provide diverse and unbiased coverage of such events as election campaigns. Both radio and television arrange debates between the parties contending in the election.

According to Chapter 6 of the Elections Law,[24] the Central Authority prepares the election ballots. Those parties receiving less than one percent of the total popular vote must pay for the

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[19] Swedish Institute, *Fact Sheet on Sweden* (September 1990).

[20] *Id.*

[21] *Id.* §§ 24-36.

[22] SFS 1977:607.

[23] SFS 1966:755, § 6, 1, a.

[24] SFS 1987:1334.

preparation and printing of their ballots. This provision, the function of which is similar to the election deposit candidates must post in British elections, can be interpreted as providing a minor subsidy to those parties represented in parliament.

III. Non-Government Funding

Before 1965 when the system of state financing for political parties was introduced, Swedish political parties were financed by membership fees and contributions from interest groups. By the 1960s it had become difficult to raise enough money to support party activities from private contributions.[25] Since the introduction of state subsidies to parties, the amount of private contributions has declined. Sweden has no limitations on the amount of private contributions by individuals or juridical persons. No regulations prohibit parties from receiving contributions from foreign sources. However, Swedish commentators assert that any party known to receive foreign funds would lose members and electoral support.

IV. Auditing Provisions and Penalties for Irregularities

There are no mandatory auditing procedures. Auditing of parties' accounts is at their own initiative and uses methods of their choice. The laws on campaign financing contain no penalty provisions. Any offenses committed would be dealt with according to the Swedish Penal Code.

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[25] Gidlund, *supra* note 16, at 47, 177-178, 315-324.

TAIWAN

I. Background and Political Structure

The government of the Republic of China (ROC), now in power in Taiwan, has three national representative bodies, the National Assembly, which elects the President, the Legislative *Yüan* (Branch), which enacts laws, and the Control *Yüan*, which has the power to impeach or censure government officials. Members are elected from each county and from the major municipalities. In addition, there are representatives for various ethnic and occupational groups, for Chinese citizens residing abroad, and for women's organizations. Members of the Control *Yüan* are elected by provincial and municipal councils, instead of by direct election; there are also Mongolian, Tibetan, and overseas Chinese representatives.[1]

Taiwan has been politically dominated by one party, the Nationalists, or *Kuomintang* (KMT), since the establishment of the ROC government in Taipei in 1949. Indeed, the Civic Group Organization Law for the Extraordinary Period[2] had allowed only one organization in each category of public life, and for politics, it was the KMT. On January 27, 1989, that law was replaced with the Law on Civic Groups During the Mobilization to Suppress the Rebellion.[3] The new law defines and permits political parties, with certain guidelines, including restrictions on donations. The December 1989 elections for the Legislative *Yüan* were the first national ones held under the 1947 Constitution in which more than one party legally contended. The major opposition party, the Democratic Progressive Party (DPP) was actually organized before the 1986 elections and was informally allowed to field candidates then. In 1989, however, the KMT vote

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[1] Elections were first held for these three bodies following the adoption of the current Constitution in 1947, on the Chinese mainland. The Communist victory in 1949, followed by the flight of the ROC government to Taiwan, has meant that new elections could not be held for most of the seats. Many of the incumbents have thus been serving--and, some claim, representing no one--for more than 40 years. The situation will soon be rectified, however, as those elected before the move to Taiwan are to end their terms of office by December 31, 1991, and the government is to carry out new elections, in accordance with Interpretation no. *shih* 261 of the Council of Grand Justices of the Judicial *Yüan*, June 21, 1990. Text appeared in *Chung yang jih pao* (Central Daily News), June 23, 1990, at 1.

[2] Promulgated Feb. 10, 1942. Chinese text in *Tsui hsin shih yung liu fa ch'üan shu* (Most Recent Guide to the Application of the Complete Six Code) 666-671 (Taipei, 1985). The phrase *extraordinary period* was a part of the title of a number of laws enacted during the war years.

[3] Text in Chinese in *Hsin pien liu fa ts'an chao fa ling p'an chieh ch'üan shu* (Revised Complete Six Codes with Comparison of Laws and Decrees and Judicial Interpretations) 86-90 (Taipei, 1989). The phrase *mobilization to suppress the rebellion* is a part of many names of laws and refers to the view of the Taipei regime that the Chinese Communists are rebellious usurpers, not legitimate rulers of mainland China.

was only about sixty percent; the DPP received about twenty-nine percent, and the other parties, of which there are about forty, got the remaining votes.[4]

The Public Officials Election and Recall Law for the Period of Mobilization for Suppression of Communist Rebellion (hereafter Election Law)[5] is the basic law outlining procedures and restrictions on electoral campaigns. In addition to its provisions on campaign financing, the law establishes the length of the campaign, qualifications for candidates, the kinds of permitted election activities, and the bodies to supervise elections, including the Central Election Commission, which is in charge of the elections for members of the national bodies--the National Assembly, the Legislative *Yüan* and the Control *Yüan* (art. 7). The President appoints the members of this commission, and not more than half of them may be of the same party affiliation (art. 8).

II. Government Funding of Campaign Activities

A. Direct Funding

Since its revision in 1989, the Election Law has provided for government funding for campaign activities. Candidates who receive at least three-fourths of the number of votes needed to be elected in their constituency are to receive a subsidy of NT$10[6] (about U.S. $0.37) for each vote received. The total received may not exceed the total spending limits established under article 45-1 of the Law (*See* discussion in § 3). The money may be used for any expenditure related to campaigning, but there are numerous controls and restrictions on campaign activities themselves, such as a total ban on radio and television advertisements (art. 55, item 4). Candidates for the Control *Yüan* are the most restricted; they are not permitted to establish campaign headquarters or employ campaign assistants (art. 46), nor may they use campaign vehicles and loudspeakers (art. 52), although candidates for other bodies may.

B. Indirect Funding

1. Transportation

The Election Law does not provide for subsidized transportation to the polls.

2. Subsidized Distribution of Publications

The Central Election Commission compiles an election gazette (Election Law, art. 50) to be distributed to each household and publicly posted. The views, serial number, photograph, name,

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[4] *Shih chieh jih pao* (World Daily), Dec. 3, 1989, at 8. Quoted in Ts'ai & Myers, "Winds of Democracy: the 1989 Taiwan Elections," 30 *Asian Survey* 363 (Apr. 1990).

[5] May 14, 1980, as last amended Feb. 3, 1989. Text in Chinese in *Hsin pien liu fa ts'an chao fa ling p'an chieh ch'üan shu* (Revised Complete Six Codes with Comparison of Laws and Decrees and Judicial Interpretations) 1277-1288 (Taipei, 1989).

[6] The New Taiwan Dollar, written NT$, about 27 of which equal one US dollar.

age, sex, place of origin, party affiliation, scholastic background, experience, occupation, and address of each candidate are included. If the Commission feels the provisions of the Election Law as to the content of political statements have been violated by a candidate's statement of views, the candidate will be notified and given a fixed period of time to revise the statement. If that period expires and no acceptable statement has been submitted, the gazette will be published without the statement of that candidates' views (art. 51).

3. Free Campaign Advertising

The Election Law does not provide for free advertisements in the media for candidates.

4. Tax Incentives

Another form of public subsidy of political expenses is through the allowance of income tax deductions. Candidates are permitted to list campaign expenditures as itemized deductions on income tax returns, when they have not had contributions to cover them, so long as total expenditures are within the spending cap (art. 45-4, para. 1). In addition, individuals making contributions either directly to candidates or to recognized political parties may itemize their gifts as deductions on income tax returns. When contributions are made by corporations, they may be listed as an expense or a loss for that tax year (art. 45-4, para. 4).

5. Public Funds To Encourage Voting and Explain Procedures

Public funds are used to encourage voting and to explain voting procedures. This is done through the distribution of the election gazettes, described above, and through government sponsored candidates forums, called political presentation meetings (art. 49). They are run by the Central Election Commission and held after the period of time in which candidates are allowed to hold their own public meetings.

III. Non-Governmental Funding by Residents

A. Prohibitions or Limitations on Contributions

All citizens and domestic corporations are permitted to contribute to candidates or to political parties. The only exceptions are that candidates may not accept contributions from other candidates for the same category of public office in the same election (art. 45-2, item 2) and that enterprises that have operated at a loss for three or more years in succession are not permitted to make campaign contributions (art. 45-4, para. 5).

B. Limitations on the Amount Contributed

Individuals may contribute up to NT$20,000 (about U.S. $740) directly to candidates and up to 20 per cent of their annual income, but not more than NT$200,000 (U.S. $7,400), to political parties. Corporations may contribute NT$300,000 (U.S. $11,100) to a single candidate and up to 10 percent of their income, but not more than NT$3,000,000 (U.S. $111,000) to a party (art. 45-5, para. 2 & 3). One businessman was quoted, however, as saying that "when he wants a small

favor from a legislator, it costs NT$100,000 [in campaign donations], but large favors cost NT$500,000-1,000,000."[7]

C. Limitations on Campaign Expenditures

The Election Law states that each candidate may spend only as much as the election commission determines for each campaign. The maximum campaign expenditures for all candidates are calculated based on the nature of the public office involved, the duration of campaign activities, the size of the constituency, the necessary expenses, and the cost of living index. For the three national elected bodies, the figures will be determined by the Central Election Commission for each election. It has been reported that for the 1989 elections to the Legislative *Yüan*, the limit for most seats was about NT$5-10 million (U.S. $185,000-370,000).[8] However some candidates have, it is rumored, spent much more, perhaps NT$30-80 million (U.S. $1,100,000-2,960,000).[9]

IV. Regulation of Foreign Campaign Contributions

Under article 45-2 of the Election Law, candidates may not accept any campaign contributions from foreign groups, juridical persons, or individuals, nor may they accept funds from groups whose principal members are foreigners. There is a parallel statement in the 1989 Civic Groups Law,[10] prohibiting contributions from foreign groups, individuals, or juridical persons to political parties (art. 51).

V. Auditing Procedures

Within thirty days of an election, candidates must report receipts and expenditures to the Election Commission. If the Commission, upon review of the report, suspects the report to be untrue, proof or further documentation may be required from the candidate. The reports are kept on file for six months; if the candidate is involved in any lawsuit, records are kept for three months from the time of judgement. The Central Election Commission establishes the detailed procedures for review of these reports (art. 45-3).

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[7] *Lien ho pao* (United Daily News), Nov. 1, 1989, at 2. Quoted in *supra* note 4, at 369.

[8] Reported by the National Democratic Institute pre-election survey team in "A Moment in Political Transition: the December 1989 Elections in Taiwan," reprinted in *The Upcoming Elections in Taiwan* 166-206, 201 (Washington, D.C. 1990) as part of the record of a hearing before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives, Nov. 15, 1989. U.S. dollar equivalencies were refigured for greater accuracy.

[9] *Lien ho pao,* Nov. 23, 1989, at 5. Quoted in *supra* note 4, at 370.

[10] *Supra* note 3.

VI. Penalties for Irregularities in Campaign Financing

Article 88 of the Election Law specifies that those who accept campaign contributions from foreign individuals or organizations shall be sentenced to a prison term of up to five years. Those who accept contributions from other candidates shall be sentenced to up to one year in prison, detention at hard labor, or a fine of not more than NT$10,000 (U.S. $370). The money and goods accepted as contributions in violation of these restrictions, or the equivalent value, shall be confiscated from the offender. A fine of from NT$10,000 to NT$50,000 (U.S. $370-1850) is imposed on candidates whose expenditures exceed the maximum established by the election commission (art. 95-1).

VII. Conclusion

Observers of the electoral process in Taiwan have reported that in practice, limits on campaign expenditures and contributions have not been respected. Wealthy individuals have donated far more to candidates than the law allows. Although candidates are required to report their spending, it is difficult to closely monitor the situation when many contributions may be in cash.[11] Taiwan has been moving toward a fuller democracy in the last few years.[12] The legalization of multiple political parties has been a major step. There are still several ways in which the electoral system tends to work for the continued dominance of the KMT. Control of the election process for national contests has been vested in the Central Election Commission, an appointed body in which up to half the members can be of the same party. This is the body that audits campaign expenditure reports and that sets the general spending limits. High ceilings tend to favor the party in power, as it can be more successful in its fundraising efforts.

The Central Election Commission also controls the issuing of the election gazette. Besides being a mechanism for encouraging voting and explaining voting procedures to the public, the process of compiling views of the candidates for the gazette is a device for supervision of the political process by the party controlling the Commission, since that body examines the contents of the political views submitted. The restrictions on contents of campaign statements apply to all literature, even that privately published. Candidates and their assistants may not in any statements instigate persons to commit offenses against the internal or external security of the state, incite persons to violently undermine social order, or commit other offenses set forth in the Criminal Code (art. 54).

Finally, no report on money and elections in Taiwan would be complete without mention of the widely reported phenomenon of vote-buying. DPP accusations of KMT abuses in this area

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[11] *Supra* note 8, at 201-202.

[12] This general progress has been recognized by Congressman Stephen Solarz, Chairman of the Committee on Asian and Pacific Affairs of the House Committee on Foreign Affairs. *Supra* note 8, at 1.

have been frequent, though hard to substantiate.[13] The one sure thing is that, legally and illegally, money will continue to be a factor in future elections in Taiwan.

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[13] *Supra* note 8, at 34.

THAILAND

I. Introduction

Parliamentary elections and political parties became part of Thai politics after the country changed from an absolute monarchy to a constitutional monarchy in 1932. The same year, the country promulgated its first two constitutions (a provisional constitution and a permanent Constitution of 1932) under which legislative power was vested in a National Assembly.[1] Since then, there have been many changes in the Thai political and governmental system. During the period from 1932 to 1988, fifteen coups (countercoups and attempted coups) occurred, thirteen constitutions (provisional and interim) were enacted, and fifteen general elections were held.[2]

Under the constitution of Thailand,[3] which was promulgated on December 22, 1978,[4] the National Assembly is composed of a Senate and a House of Representatives. Members of the Senate are appointed by the king and cannot exceed three-fourths of the total number of members of the House of Representatives (Constitution, § 84). Although senators serve a regular term of six years, one-third of the Senate is to be replaced every two years (§ 85). In practice, Senate members have mostly been chosen from the Thai military elite.[5] By contrast, members of the House of Representatives are popularly elected by direct suffrage and secret ballot (§ 91) for a term of four years (§ 99). The number of members to be elected is based on a ratio of one member for every 150,000 population (§ 90). An election must be held within 60 days of the expiration of the four-year term of the House or within 90 days if the lower house is dissolved by royal decree (§100-101). However, § 101 further stipulates that the House of Representatives may only be dissolved once under the same circumstances. Candidates for election are required to be

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[1] *Thailand: A Country Study* 26-27 (Washington, D.C., 1989).

[2] 2 *World Encyclopedia of Political Systems & Parties* 1006 (New York, 1983).

[3] Following the military coup of February 23, 1991, it appears that the Constitution will be replaced by an interim constitution of 32 articles, to be introduced, according to a news report of February 27, "within the next day or two." Upon taking power, the coup's leaders abolished the Constitution and declared martial law. Mary Kay Magistad, "Thai King Approves Army's Coup," *The Washington Post*, Feb. 27, 1991, at A16. *See* Conclusion, below.

[4] A. Blaustein & G. Flanz, *ed.*, *The Constitutions of the Countries of the World* 1-14 (New York, 1979). The text of this Constitution was also published in 33:2,3 *Royal Thai Government Gazette* (Jan. 20-30, 1979), which is published by International Translation.

[5] Thus, records from the late 1980s show that up to 85% of the Senators appointed were from the armed forces and the police. The rationale for favoring this group was that it would allow the military to participate in the political arena through the parliamentary system, instead of having to resort to force. [*See supra* note 1, at 187].

members of a political party (§ 94). This provision first appeared in the 1975 Constitution in order to eliminate the problem of having too many single independent candidates, as had been the case in past elections.

II. Regulatory Statutes for Elections

The formation, administration, and dissolution of political parties in Thailand has been governed by the Political Act of July 8, 1981.[6] Parties are quite loosely formed and organized. Because the ties between members and their parties are typically rather weak, it is not unusual for members of the National Assembly to change their affiliation in order to create a parliamentary coalition or in exchange for money.[7] One of the problems in Thai elections is the unusually large number of political parties. For example, in the 1975 and 1979 elections, the number of parties that participated was forty-two and thirty-nine, respectively. Such a large number of parties has been a continuous source of confusion for Thai voters. The Political Act of 1981 apparently helped solve the problem by requiring that a party must have at least 5,000 members throughout the country before it may participate in an election. As a result, in the 1983 and 1986 elections, the number of parties that took part in elections was only fourteen and sixteen, respectively.[8] In the last elections, held in July 1988, a total of sixteen parties participated. They fielded 3,606 candidates to compete for 357 seats in the House of Representatives. The four ruling parties--the *Chart Thai* (Thai Nation) Party, *Kit Sangkhom* (Social Action) Party, *Prachathipat* (Democrat) Party, and *Rassadorn* (People's) Party--formed a 215-member coalition government with one additional new partner, the *Saha Prachathipatai* (United Democracy) Party.[9]

Elections of the House of Representatives are governed by the Act on Election of Members of the House of Representatives B.E. 2511 (1968),[10] the Act on Election of Members of the House of Representatives (No. 2), B.E. 2517 (1974),[11] the Act on Election of Members of the Assembly of the People's Representatives (No. 3) B.E. 2517 (1974).[12] However, the 1968 Act

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[6] 35:20 *Royal Thai Government Gazette* 235-251 (July 20, 1981).

[7] Supra note 2, at 1009.

[8] *Supra* note 1, at 210-211.

[9] *Id.* at xxvii.

[10] *Law Directory 1968* 242-258 (Thailand, International Translations, 1968).

[11] 28:31 *Royal Thai Government Gazette* 527.

[12] 28:31 *Royal Thai Government Gazette* 528-535 (November 10, 1974). Apparently, one of the amendments in the Act on Election of Members of the Assembly of the People's Representatives (No. 3) is the new name adopted for the lower house of the Thai National Assembly. However, in the English translation of Thailand 1978 Constitution, it still refers to the lower house as the House of Representatives.

and its amendments No. 2 and No. 3 of 1974 are all silent on the subject of financing election campaigns.

III. Government Funding

A. Direct Funding

In the Thai political system, the government does not provide any funds directly to either political candidates or to political parties.

B. Indirect Funding

As for indirect funding by the government, exemption of taxes on income and property received legally by political parties, as indicated under § 35 of the 1981 Political Act, is allowed.

According to a representative of the Thai Embassy in Washington, D.C., the only other kind of indirect government funding or subsidy is the free time on government-operated radio stations and television channels given to political parties at the time of the election. According to the same official, although there are also programs on voting rights and voting procedures, there are no funds specifically allotted for such a purpose.

IV. Private Funding by Residents

Under Chapter 2 of the 1981 Political Act, on the administration of political parties, there are several provisions concerning bookkeeping for political parties. For example, §§ 35 and 36 of the Act require that the party leaders and whoever handles the business of the political party and its branches must have a record of accounts showing funds received and paid, including the cause or evidence of every receipt or payment and a record of the assets and liabilities of the political party. These records have to be made available for auditing purposes and for inspection by members of the party. The law is silent on the matter of limitations on the amount of funds that a political party may receive and of limitations on amounts it may receive specifically to finance political campaigns from private contributors. However, there are restrictions on the purpose of contributions by individuals and on the acceptance of funds by a political party. For example, § 38 stipulates that no person shall give money, property, or any other benefits to a political party or its members in order to induce that political party or member to commit acts against the interest and security of the country and its people. The same clause is applied to political parties in § 39, regarding the use of funds received.

In practice, most of the money spent on political campaigns has been collected by the leadership of the various parties from businessmen and military sources. Local candidates from rural districts are provided with financial support for the election. However, since election campaigns at the national level are not managed by the party leadership, the candidates have to manage their own campaigns and raise their own supplemental funds. Although there are some limitations on the amount candidates may spend, expenditures for election campaigns have always been very high. Excessive sums have been spent not only on advertisements and personal

appearances, but especially on direct vote-buying by providing free meals and other free social services.[13]

V. Private Funding by Foreign Contributors

The Political Act of 1981 does not allow Thai political parties or their members to accept any kind of contribution from foreign sources. In accordance with §§ 40 and 42 of the Act, foreign contributions include money, property, or other benefits. Section 40 defines foreign contributors as follows:

> 1) any person who is not of Thai nationality;
>
> 2) any juristic person under foreign law engaged in business or having a branch office registered in Thailand or outside of Thailand;
>
> 3) any juristic person registered in Thailand with more than 25% of its capital or shares belonging to persons who are not of Thai nationality;
>
> 4) organizations or juristic persons receiving funds from foreign countries and having the objective to carry on business for the benefit of persons of non-Thai nationality or having managers or directors of non-Thai nationality;
>
> 5) individuals, organizations, or juristic persons accepting money, property, or other benefits for the operation of a political party or political activities from individuals, organizations, or juristic persons pursuant to paragraphs (1), (2), (3), or (4).

Section 42 stipulates that individuals, organizations, or juristic persons defined in § 40(1)-(5) are forbidden to give money, property, or other benefits to any political party or its members for the operation of political activities.[14]

VI. Penalties

Section 59 of the Political Act of 1981 stipulates that executive committee members, officers of political party branches, or any member who arranges for a political party to violate § 40 of the Act shall be punished by imprisonment for a period of from two to ten years, a fine of from two hundred thousand *baht* U.S. ($8,000) to one million *baht* (U.S. $40,000), or both (U.S. $1.00 equals about 25 *baht*). Any person who violates § 42 shall be punished by imprisonment for a period not to exceed ten years or a fine not to exceed one million *baht,* or both, and if the violator is a non-citizen, he shall be deported from Thailand.[15]

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[13] *Supra* note 2, at 1009.

[14] *Supra* note 6, at 246, 247.

[15] *Supra* note 6, at 251.

VII. Conclusion

Thailand has made great advances in its search for a truly democratic system. However, political parties and the parliamentary system still do not have a very strong role in Thai politics. Since the military coup of 1932, the real power and authority have always been in the hands of the military elite. Thus, each time there has been a coup, the country has witnessed the banning of political parties and the abolition of elected assemblies by the military. However, because the parliamentary system is considered to be an essential part of a legitimate constitutional government, it has always been reinstituted.[16] The weakness of politicians and the parliament in Thailand have commonly been explained as due to the traditional Thais negative attitude towards political activities in general and towards politicians in particular.[17] It is also acknowledged that Thai parliamentarians make matters worse by becoming involved in many different forms of corruption, such as accepting bribes to switch votes, diverting funds, taking kickbacks from developers, and so on.[18] The military elite in Thailand, on the other hand, has never stopped consolidating its political power since the revolution of 1932. In fact, the military structure has honed the ability to produce officers with high political skills and has repeatedly proved its ability to take political power away from the parliament at will.[19]

Once again, on February 24, 1991, a military junta headed by a general successfully took over the government in a bloodless coup and temporarily imposed martial law. For the near future, the country will be governed by the junta, known as the National Peace-Keeping Council (NPC). As a consequence of the coup, Thailand's Constitution has been abolished and the Parliament disbanded.[20] General Suchinda Kraprayoon, deputy leader of the junta, announced that the junta has not prohibited the continued existence of Thai political parties at this time and intends to hand back power to an elected government within six months, following the drafting of a new constitution by legal experts, its promulgation, and the holding of general elections.[21] A provisional constitution was published on March 1, 1991. It calls for a National Assembly that will draft a new constitution.[22] One of the goals of the NPC is to have the new constitution

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[16] *Supra* note 2, at 1006.

[17] D. Morell & C. Samudavanija, *Political Conflict in Thailand* 25 (Cambridge, England, 1981).

[18] J. L. S. Girling, *Thailand Society and Politics* 159 (Ithaca, N.Y., 1981).

[19] *Supra* note 14, at 58.

[20] *The Independent* (London), Feb. 24, 1991, at 16.

[21] Kyodo News Service, Feb. 24, 1991 (NEXIS, Current file).

[22] Foreign Broadcast Information Service, *Daily Report: East Asia*, 37-40, March 4, 1991 (FBIS-EAS-91-042).

include provisions that prohibit vote-buying, which, according to the general, was a cause of the widespread corruption in the previous government.[23]

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[23] *Supra* note 21.

TURKEY

I. Introduction

Turkey's political structure follows the parliamentary system. The Turkish Grand National Assembly, Parliament, is unicameral and composed of 450 representatives who are elected for five years by direct, universal suffrage. Elections of the representatives to the National Assembly is regulated by the Electoral Law, the Election Law of the Members of the Parliament and the Political Parties Law.[1] Provisions of these laws favor large parties because of the crisis of 1970's that led to the military takeover. The crisis is attributed to the erosion of state authority under weak coalition governments. The proliferation of political parties made it impossible for any party to win a Parliamentary majority to form a strong government to deal with the crisis.

Article 14 of the Electoral Law requires political parties to be organized at least in fifty percent of the provinces or have groups[2] in Parliament to be eligible to compete in the elections. To win any seats in the Parliament, parties must have at least ten percent of the total valid votes cast in the country, and each of their candidates must have at least the minimum number of votes required to win the election in his/her constituency, *i.e.*, the total number of valid votes cast in his/her constituency divided by the number of seats that constituency elects.[3]

Party candidates are selected in primary elections by the party members. However, parties' Central Executive Committees have the right to nominate one candidate for each constituency that elects at least four representatives.[4]

Every phase of elections is supervised by the High Election Board which consists of six judges from the Court of Cassation and five judges from the Council of State. The Board examines parties and candidates to determine whether they qualify under the above-cited laws to participate in elections.[5]

The last general election of the members of the Parliament was held on November 29, 1987, with voter participation as high as 93.3 percent. Seven parties qualified to compete but only

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[1] Law No. 298 of April 26, 1961, Law No. 2820 of April 22, 1983 and Law No. 2839 of June 10, 1983 *in* F. Çoker *and* S. Kazanci, *Türkiye Cumhuriyeti Kanunlari* 6699-6738, 9614-9648 and 9720-9733, respectively (Ankara, 1972-).

[2] A parliamentary group must have at least twenty representatives, art. 22 of Law No. 2820 *id.* at 9622.

[3] Law No. 2839, arts. 33,34, *supra* note 1, at 9727-9728.

[4] Law No. 2820, arts. 37,38, *supra* note 1, at 9624.

[5] Law 298, arts. 11,14, *supra* note 1, at 6701-6702.

three of them won seats in Parliament. The Motherland Party (ANA) with 36.3 percent of the votes won 292 seats, the Social Democrat Populist Party (SAP) with 24.8 percent won 99 seats and the True Path Party (DIP) with 19.1 percent won 59 seats.[6]

This study is limited to an analysis of the laws governing campaign financing of only the general elections of the members of Parliament since the President is elected by the members of Parliament without the necessity of any campaign spending.

II. Government Funding

A. Direct Funding

Turkey, like most countries with parliamentary political systems, provides funds to political parties rather than to political candidates, because election campaigns are run by parties for their candidates. Thus, almost all campaign expenses are paid out of party funds. Any party that has won at least seven percent of the total valid votes cast in the last general parliamentary election qualifies for an annual subvention. The amount a party that has won at least ten percent of the valid votes receives varies with the number of that party's seats in the Parliament and the size of the total estimated revenues of the state for that year. The total fund to be distributed to the qualifying parties consists of one out of every five thousand liras of the estimated revenues. Each party's share of the fund must be paid within ten days of the approval of the budget.

Subventions to the parties that have won more than seven but less than ten percent of the valid votes in the last general elections are determined based on the amount of the fund the smallest party in Parliament receives. These parties' shares vary with the size of the subvention the smallest party receives and the ratio of the votes that party has won to the votes of the parties that do not have any seats in the parliament but have exceeded a seven percent threshold. In an election year, subsidies to these parties are tripled. These funds are provided from the Finance Department's budget.[7]

The parties can use their funds only for organizational and election expenses no matter whether they come from public or private sources.

B. Indirect Funding

In Turkey, indirect subventions to the political parties are limited to free broadcasting time on the public network and tax exemptions for most of their income. However, election expenses including providing ballots, transportation for the election committees to go to polling places and sending out information concerning voting procedures to each voter are paid by the High Election Board. If the parties participating in the elections apply to the High Election Board twenty-one days before the elections, they are granted two ten-minute periods of free air time. In addition,

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[6] *Millet Vekili genel Seçimi Sonuçlari* x-xi (Ankara, Başbakanlik Devlet Istatistik Enstitütüsü 1988).

[7] Law No. 2820, Suffix 1, *supra* note 1, at 9645.

the parties that have parliamentary groups may receive ten more minutes. Furthermore, the majority party is awarded an additional twenty minutes and the main opposition party ten minutes.

The parties may set aside up to fifty percent of the time allocated to them for television. They are not permitted to use more than ten minutes a day, and each program cannot be less than two minutes. The Board determines the schedule of each party's radio and television programs by drawing lots. Programs can start only seven days before the election day and end at 6 p.m. on the eve of the elections. The time of each party's programs must be announced by radio and television newscasters and all programs must be broadcast, simultaneously, on all channels.

Beside the time limitations, the law provides restrictions on the content of the speeches and for television programs also the appearances of the speakers. Speeches should mainly explain the party's program and past achievements. They should not contain remarks that would violate criminal laws. If it is a television program, male and female speakers must wear suits and males must also have ties. Only the Turkish flag and party emblem can be seen in the background. Programs are prepared outside the Turkish Radio and Television Institution and the expense of preparation is borne by the parties.

During the period that begins fifteen days before elections and ends at 6 p.m. on the eve of the elections, radio and television election news bulletins must contain messages that are submitted by the political parties participating in the elections. The High Election Board limits the number of words each party's texts may have.[8]

The High Election Board has the duty of encouraging voter participation in the elections. The Board is allowed unlimited free radio and television time to educate the public on the voting procedures, *i.e.*, it explains that at the polling place the voter's identification will be checked against the list of names assigned to that ballot box, after which the vote will be cast in privacy. Broadcasts of the Board also remind the public of the voting hours and the date and explain that participation in the elections is not only a privilege but also the duty of each citizen qualified to vote and that nonparticipation is an offense that carries a fine.[9] Furthermore, the Board informs each voter by mail of the voting procedure to be followed and the place of his or her ballot box.[10]

III. Non-Governmental Funding

The Political Parties Law does not provide any limitations on campaign spending but restricts party funds from private sources to the following: membership dues; registration fees of candidates competing in an election; dues members of Parliament pay to their parties; profits from the sale of party pins, emblems, publications, and entertainment programs organized by party

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[8] Law 298, art. 52, *supra* note 1, at 6710(5)-6710(6).

[9] In the last election it was approximately $13.

[10] Law No. 298, suffix arts. 1-2, *supra* note 1, at 6736-6737.

members; income from the party's properties; and donations by supporters. All income of the parties is exempt from taxes except income from their properties.[11]

Parties freely regulate the amount of membership dues, but the dues that the members of Parliament pay are decided by that party's parliamentary group. However, they cannot be more than one month's pay of a member of the Parliament. If the members of the Parliament of a party do not have enough seats to form their parliamentary group, their dues are determined by the executive committee of their party but cannot be more than half of the monthly salary paid to a member of Parliament.[12]

Parties' regulations provide for the amount of the registration fees their candidates shall pay. The upper limit of these fees is also established by law as half of the salary of a member of Parliament.[13]

IV. Prohibitions and Limitations

The Political Parties' Law not only prohibits certain organizations from donating anything to political parties, but also limits the amount of contributions allowable from private sources. No government or municipal body, nor any corporation of which all or some of its capital is invested by the government or municipalities, nor banks or any other companies that are established by special laws, cooperatives, labor unions, employers' associations, professional associations, humanitarian organizations or religious foundations may donate to political parties. Individuals and private corporation that are permitted to support parties with their contributions cannot donate more than 50,000,000[14] Lira or anything the value of which exceeds that amount in the same year. Parties are also forbidden to take loans.[15] The law requires parties to give receipts for all donations. The receipts must contain the name and adress of the donor, amount or value of the contribution, and the date. The receipts must be signed by the person who has accepted the donation in the name of the party.

Furthermore, political parties cannot receive any contributions from foreign sources whether private or otherwise including international organizations.

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[11] *Supra* note 7, art. 61, at 9630.

[12] *Id.* art. 63, at 9631.

[13] *Id.* art. 64.

[14] Approximately $17,000.

[15] *Supra* note 7, art. 72, at 9633.

Although the law does not restrict campaign expenditures of parties, it does provide an effective control over their spending. Any expenditure of over 5,000[16] Lira must be proved by a receipt when a party's account is audited.[17]

V. Auditing Procedures and Penalties for Irregularities

In June every year, all parties must submit their financial statements to the Constitutional Court and the Attorney General. If the Court discovers any income from forbidden or unsubstantiated sources during the examination of a party's accounts, it shall order the party to turn over an equal amount to the state treasury. If there are any donations that exceed the limitations of the law, the extra amount shall be turned over to the state treasury.[18]

The same rules apply to loans and expenditures. Anything borrowed by a party must be turned over to the state and the individual or corporation that made the loan loses the right to collect it. An amount equal to the party's spending that cannot be proved by receipt must be also turned over to the state treasury.

The Constitutional Court usually fails to audit the accounts of the parties in the year submitted. It generally takes a few years before the Court examines them. However, the Court's tardiness is made up by its thoroughness. Even the smallest irregularities are not overlooked. The audit of the True Path Party's 1985 account is a good example. Expenditures as insignificant as 6,000 Lira (approximately over U.S. $2.00) and 9,000 (approximately over U.S. $3.00) Lira were found without proper proofs required by law. Their total, 16,000 Lira, was ordered to be turned over to the state treasury. Donations to the party, however small they were, if entered into the books without the name of the contributor or the contributor's address were also ordered to be turned over to the treasury.[19]

VI. Conclusion

After the 1961 Constitution came into effect, there was such an increase in the number of political parties that no party could win a majority in Parliament. Consequently, only coalition governments could be formed. Under these weak and unstable governments the country fell into grave crisis. Therefore, since the 1982 Constitution came into force, the election laws have been amended to favor large parties.

Amendments also affected the government subsidies provided for political parties. The size of subvention a party receives depends on the size of that party. Small parties raised their

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[16] Approximately $2.

[17] *Supra* note 7, art 70, at 9632.

[18] *Id.* art. 76, at 9634.

[19] Constitutional Court Decision No. 1990/8, *in T.C. Resmi Gazete* No. 20626 of September 5, 1990, p. 51-56.

objections to the amendments that favored larger parties and asked the Constitutional Court to repeal the provisions that created the inequality, without success. The Court did repeal an amendment that would have affected campaign financing by allowing political parties to buy air time. This would have greatly increased campaign expenses. The Court reasoned that the parties with greater financial resources could buy more air time, which would have given them a better chance to influence public opinion. This may have led some parties to accept donations from sources that expected favors in return for their financial support, thus starting a dangerous trend of opening doors to political corruption.[20] The Court's opinion sends a clear message to the parties. Although the law does not limit campaign spending, the Constitutional Court finds it in the public interest to keep campaign expenditures of the parties at a reasonable level which would not force them to accept undesirable donations.

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[20] Constitutional Court Decision No. 1987/14 [*id.* No. 19578 of September 18, 1978, p. 13-24].

APPENDIX

BULGARIA

I. Introduction

The issues of the election system and the campaign financing did not exist in Bulgaria during the period between September 9, 1944, when the Bulgarian Communist Party (BCP) seized political power after a *coup d'état* and "with the decisive help of the Soviet Army"[1] and April 3, 1990, when a law introduced the creation and existence of a multi-party system.

During this period all political parties were abolished and prohibited with the exception of the Bulgarian Communist Party which was converted to a *de jure* constitutional agency. In fact, the 1971 Constitution legalized the status of the BCP and declared Bulgaria a one-party state.

A special law passed by the National Assembly on April 3, 1990,[2] introduced major changes in the text of the Communist Constitution of May 18, 1971,[3] as previously amended on January 15, 1990.[4] The revised text of the Constitution emphasizes the point that "political parties shall be the basic form of free association of the citizens for participation in political life ...."[5]

On January 25, 1990,[6] the Law on Meetings, Rallies, and Demonstrations was adopted. This act defines and guarantees the organization and conduct of such activities by citizens. This Law also covers political or other organizations through which Bulgarians may express their opinions, views, or positions on questions of a political, economic, social, cultural, or other nature through words, posters, models, or any other suitable vehicle.

The Law on Political Parties was adopted by the National Assembly on April 3, 1990,[7] and entered into force on the date of its publication in the official law gazette on April 10, 1990. The Law states that Bulgarian citizens may freely associate in political parties as well as assist in the formation and expression of the political will of the people through elections and other

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[1] For a detailed description of the legal structure of Bulgaria, consult Ivan Sipkov, "Legal System of Bulgaria" *in* 8 *Modern Legal Systems Cyclopedia*, 37-82 (Ed., K.R. Redden, Buffalo, N.Y., W.S. Hein, 1985).

[2] *Durzhaven Vestnik* (Official law gazette of Bulgaria, DV), No. 29, April 10, 1990.

[3] DV No. 39, May 18, 1971.

[4] DV No. 6, January 19, 1990.

[5] *Supra*, note 2, § 30, art. 52(2).

[6] DV No. 10, February 2, 1990.

[7] DV No. 29, April 10, 1990.

democratic processes. A political party must be established by at least 50 Bulgarian citizens who have electoral rights.[8] It may not use the coat of arms or the flag of the Republic of Bulgaria or of foreign states or any religious signs or images as a symbol. Political parties may be supported by the following means: membership fees, gifts and wills, income form economic activities, and funds from the State budget.

The elections are to be based on universal, equal, and direct electoral suffrage with secret ballot. All citizens of the People's Republic of Bulgaria, 18 years of age or older, regardless of race, sex, nationality, social origin, property status, education, and religious faith, with the exception of individuals under judicial disability and serving the penalty of deprivation of freedom, will have the right to vote and to be elected.

There are currently four major political groups[9] on the Bulgarian political scene: the Bulgarian Socialist Party (BSP) (formerly the Communist Party), the opposition Union of Democratic Forces (UDF), the Agrarian Party, and the ethnic Turkish-based Movement for Rights and Freedoms.

Edict No. 1 of the President of the Republic, signed on April 3, 1990,[10] fixed the date for the first multi-party elections of the Grand National Assembly for June 10, 1990. A run-off election was held on June 17, 1990. The results[11] of these elections were:

The top vote-getters (and the only parties to break the 4 percent threshold for proportional seats) following the June 10 election were the Bulgarian Socialist Party, which received 2, 886,363 votes, the Union of Democratic Forces with 2,216,127, the Bulgarian Agrarian National Union with 491,500, and the Movement for Rights and Freedoms with 368,929 votes.

Of the 200 Grand National Assembly seats allocated to parties according to their overall voting percentage, the breakdown was as follows:

Party	Percent of Vote	Seats Won
Bulgarian Socialist Party (BSP)	47.15	97
Union of Democratic Forces (UDF)	36.20	75
Bulgarian Agrarian National Union (BANU)	8.03	16
Movement for Rights and Freedom	6.03	12

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[8] *Id.*, art. 7.

[9] *Elections in Central and Eastern Europe.* A Compendium of Reports on the Elections Held from March through June 1990. Compiled by the staff of the Commission on Security and Cooperation in Europe [*See* "Bulgaria," p. 135-137 (Washington, D.C.)].

[10] DV No. 28, April 6, 1990.

[11] Elections, *supra* note 9.

Twenty-five other parties shared 2.59 percent of the proportional vote not won by the four main parties.

A total of 81 of the 200 single-mandate ("majoritarian") seats were contested in the June 17 second-round elections. The final election results of the 400 total (single-mandate and multi-mandate) seats were as follows:

Party	Percent of Vote	Seats Won
Bulgarian Socialist Party (BSP)	52.7	211
Union of Democratic Forces (UDF)	36.	144
Movement for Rights and Freedoms	5.75	23
Bulgarian Agrarian National Union(BANU)	4.	16
Others		6

II. Government Funding

A. Direct Funding

Chapter 3 of The Law on Political Parties, adopted on April 3, 1990,[12] is devoted to the property of the political parties. It states that the sources of funds of the parties may be: 1. initial and membership fees; 2. gifts and wills; 3. income form economic activities; and 4. funds from the State budget.[13] Furthermore, this Law specifies that the State may directly subsidize political parties during the conduct of election of deputies, as well as for their activity, in accordance with the number of people's representatives within the frame of funds determined in the State budget.[14] The deputies are also entitled to receive a monthly labor remuneration which is to be determined by the National Assembly. However, they may not perform other paid work.[15]

The Law's Section on Transitory Provisions states that, within a period of one year upon entering into effect of this Law, the political parties may directly receive as gifts from foreign non-profitable legal entities, technical resources or their monetary value necessary for the realization of their activity.[16]

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[12] DV No. 29, April 10, 1990.

[13] *Id.* art.17.

[14] *Id.* art. 18.

[15] *Id.* art. 86, para. 2.

[16] *Id.* art. 4.

The Decree No. 44 of May 10, 1990,[17] expressly specified that the State will cover the expenses related to the elections of the Grand National Assembly (to be held June 10 and 17, 1990), up to 5.7 million leva,[18] as well as the expenses related to the activities of the political parties in the preparation of the elections, up to 6.0 million leva. However, the Decree does not expressly indicate whether this support is meant to be a direct government funding.

B. Indirect Funding

The Law on the Election of the Grand National Assembly of April 3, 1990[19] specifies that "the cost of organizing the election and the technical cost shall be covered by the State" and that "all papers, applications, grievances, certificates, and other documents issued in pursuance of this Law shall be exempt from taxation."[20] The election law further provides for fair and equal access to the Bulgarian mass information media.[21] The Bulgarian News Agency, the Bulgarian Radio, and the Bulgarian Television must present the election platforms of the parties which have nominated candidates on an equal and free of charge basis. In the final 30 days before the election, the programs of the Bulgarian Radio and the Bulgarian Television must report the parties' election campaign on equal terms and proportionate to the number of candidates registered by each party. On the last day of the election campaign, these agencies must extend equal terms and allot air time to the airing of each party's election-eve statement.

During the pre-election campaign, the political parties and candidates may be free to employ in their election campaigns such propaganda material as posters, placards, advertisements, stickers, leaflets, appeals, etc.[22] The political party may have its own publications and to perform publishing activities.[23] It also may perform economic activity in accordance with its Bylaws and goals and to assist its support.[24] These forms of income enjoy a reduction and relief from taxation.[25]

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[17] DV No. 40, art. 86, para. 2.

[18] Six million leva equals U.S.$2,105,263.

[19] DV No. 28, April 10, 1990.

[20] *Id.* art. 8.

[21] *Id.* art. 49(1).

[22] *Id.* art. 50(1).

[23] DV No. 29, April 10, 1990, art. 19.

[24] *Id.*, art. 53.

[25] *Id.* art. 20(2).

III. Non-Governmental Funding by Residents

Under the Law on the Election of the Grand National Assembly, candidates may not receive election-related aids, donations, and contributions from foreign states, from foreign corporations, or from foreign individuals.[26] During the pre-election campaign, the personal contributions for financing such a campaign, may not exceed 100 leva. Corporate contributions may not exceed 2,000 leva. A candidate's total campaign funding shall not exceed 20,000 leva.[27]

IV. Regulation of Foreign Campaign Contributions

The political parties must not receive election-related aids, donations, gifts, and inheritance from foreign states and organizations, or from unidentified sources.[28] Foreign citizens may make individual and collective donations not to exceed U.S. $500 or U.S. $2,000, respectively. Thus, they may not receive financial or material assistance from foreign states and organizations, but contributions from foreign citizens of up to U.S. $500 and up to U.S. $2,000 per group are allowed.[29] There is a one-year moratorium on this prohibition. During that period, foreign organizations may donate technical and material support. However, the political parties may not be financed by agencies, enterprises, and organizations.

The special law on the Election of the Grand National Assembly states that the expenses for the organizational-technical preparation of the conduct of elections will be assumed by the State.[30] All papers, grievances, statements, certificates, and other documents under this law are exempt from taxation.

V. Auditing Procedures for Campaign Financing

The Law on the Election of the Grand National Assembly of April 2, 1990, states that two months after the election, the newly elected deputies must report all sources of financing and all campaign expenditures to the Grand National Assembly.

The financial activity of the political parties are controlled by the special organs of the National Assembly. At the end of every year, each political party must submit a report concerning the amount and sources of income, which is to be published in the official law gazette, *Durzhaven*

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[26] DV No. 28, April 10, 1990, art. 52(2).

[27] *Id.* art. 53.

[28] DV No. 29, April 10, 1990, art. 17(2).

[29] *Id.*

[30] DV No. 28, April 6, 1990, art. 8(1) & (2).

Vestnik.[31] Under the Law on the Election of the Grand National Assembly, the candidates must openly report election campaign financing to the electorate and the electoral commissions.[32]

VI. Penalties for Irregularities Committed with Regard to Political Campaign Financing

Money and property received in violation of the above-cited legal provisions are confiscated by the State.[33] Violations committed with regard to political campaign financing are punishable by separation from the position occupied by the persons involved.[34] There are no famous cases known to date related to such irregularities.

VII. Conclusion

It must be pointed out that the Bulgarian Socialist Party, by virtue of its historically dominant position, maintained considerably unfair financial and bureaucratic advantages over the opposition in terms of access to material resources and monies, including office space and other facilities, telecommunication equipment, and access to the media, and the above information clearly indicates that Bulgaria is one of the countries in Europe where a Communist Party, even though under a different name, remains in power.[35]

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Law Library of Congress
February 1991

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[31] DV No. 29, April 10, 1990, art. 52(1).

[32] DV No. 28, April 6, 1990, art. 52(1).

[33] DV No. 29, April 10, 1990, art. 17(4).

[34] DV No. 28, April 6, 1990, art. 4(2).

[35] Elections, *supra* note 9, at p. 139.

POLAND

I. Introduction

Until April 1989, Poland had no free elections and consequently no problem of campaign financing. Electoral campaigns were limited to publishing posters with basic biographical information on candidates and were financed directly from the state budget.

Poland's communist government was forced into formal talks with the opposition in early 1989 and on April 5, 1989, signed the Round Table Agreements.[1] The Agreements guaranteed "political pluralism, expressed mainly by the right to free gathering," and allowed for some participation by the opposition in political life.[2] As an immediate result of the Agreements, on April 7, 1989, the *Sejm* (legislature) passed three laws[3] which introduced major changes in Poland's political and legislative system and electoral laws. The most important provisions were: the establishment of a second chamber, called the Senate,[4] the possibility of free nomination of candidates to the *Sejm* and the Senate by the electorate, and the creation of the office of President in place of the Council of State.

The Senate--which had some legislative initiative and amending powers--was composed of 100 Senators.[5] Two Senators were elected from each of forty-seven electoral districts (*voivodships*)

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[1] *See*, e.g., Z. Pelczynski & S. Kowalski, "Poland," 9 *Electoral Studies* 346, 346 (1990), hereinafter Pelczynski. The article provides a very comprehensive description of the most recent elections in Poland. Although it does not discuss legal issues, it is very useful for evaluation of the development of a truly democratic electoral system in Poland.

[2] *See*, e.g., R. Matyja & R. Stepien, "Political Groupings in Poland," *Contemporary Poland*, Special Issue 8 (1990).

[3] i/ The Law of April 7, 1989 on Amendment to the Constitution of the Polish People's Republic, *Dziennik Ustaw* (Official Gazette, Dz.U) No. 19, item 101 (1989), hereinafter April 1989 Amendment; ii/ The Law of April 7, 1989 on Elections to the *Sejm* of the Polish People's Republic for the 10th Term, 1989-1993, Dz.U. No. 19, item 102 (1989), hereinafter *Sejm* Law, subsequently amended: Dz.U. No. 36, item 198 (1989), and iii/ The Law of April 7, 1989 on Elections to the Senate of the Polish People's Republic, Dz.U. No. 19, item 103 (1989), hereinafter Senate Law. Pursuant to article 1 of the Senate Law, the elections to the Senate were governed by appropriate provisions of the *Sejm* Law, unless otherwise specified in the Senate Law. It is important to notice that the *Sejm* Law was provisional by its own terms since it governed only the 1989 elections for the 10th term (1989-1993).

[4] Until April 7, 1989, Polish law provided that the Polish legislature had only one chamber, called the *Sejm*.

[5] The Constitution, art. 28, as amended.

while the Capital City of Warsaw and Katowice voivodships elected three Senators each.[6] Inasmuch as the Senate's powers were inferior to those of the *Sejm*, the law provided for all Senate seats to be freely contested. This permitted opposition and independent candidates to win all Senate seats, which was not anticipated.

The number of seats in the *Sejm* was fixed at 460.[7] However, not all seats in the *Sejm* were freely contested. Pursuant to the Round Table Agreements and the *Sejm* Law,[8] the Resolution of the Council of State[9] provided that 299 (65%) of the seats were reserved for the communist-led coalition and 161 (35%) for non-party candidates. Among the 299 seats reserved for the ruling coalition, 156 (34%) were reserved for the Polish United Workers' Party[10] (The Communist Party). In the June 1989 elections, non-party, Solidarity candidates won a sweeping victory in the Senate and the *Sejm*.[11] They received 99 out of 100 Senate seats and 161 *Sejm* seats (35%), which was all they were able to contest.[12]

On January 27, 1990, the Polish United Workers' Party ended its existence and was replaced by the Social democracy of the Republic of Poland (SdRP) and the Social Democratic Union of the Republic of Poland (which later changed its name to the Polish Social Democratic Union - PUS).[13] At the same time, new political parties were mushrooming. At the end of August 1990, there were 73 political parties in Poland.[14] On July 28, 1990, the *Sejm* passed the Law on Political Parties.[15]

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[6] The Senate Law, art. 3.

[7] The same as previously [*See* art. 21 of the amended Constitution].

[8] The *Sejm* Law, art. 39

[9] The Resolution of the Council of State of April 13, 1989 on Electoral Districts to the *Sejm* of the Polish People's Republic and on the Number, Numeration, and Assignment of Seats in These Districts, Dz.U. No. 21, item 111 (1989).

[10] Z. Jarosz, *System wyborczy do Sejmu i Senatu* (Electoral System to the *Sejm* and Senate) 5 Panstwo i Prawo 4, 9 (1989).

[11] M. Brzezinski, "Constitutional Heritage and Renewal: the Case of Poland," 77 Va. L. Rev. 49, 103 and note 375 (1991).

[12] Pelczynski, *supra* note 2, at 349-351; J. Diehl, Solidarity's Election Victory Gives It Check on Party [Washington Post, June 20, 1989, at A25 and A26].

[13] Matyja, *supra* note 3, at 10.

[14] *Id.* at 13-32.

[15] Dz.U. No. 54, item 312 (1990), hereinafter Parties Law.

On September 27, 1990, the *Sejm* passed another Constitutional Amendment[16] which called for the election of a President by a popular ballot.[17] The date of the Presidential election was set for November 25, 1990.[18] However, on that date none of the six Presidential candidates received an absolute majority of valid votes required by article 68 of the Presidential Law and run-off elections between the two highest scoring candidates had to take place after 14 days.[19] In the second round of voting, Lech Walesa received 74% of valid votes and became the first freely elected President of the Republic of Poland.[20]

II. Government Funding

A. Legislative Framework

After 1989, the electoral law provisions related to campaign financing were very brief and regulated very limited matters. The 1989 *Sejm* Law contained 101 articles out of which only four articles, i.e., articles 96-99 regulated campaign financing. Pursuant to article 1 of the Senate Law, elections to the Senate were governed by appropriate provisions of the *Sejm* Law, unless specified otherwise in the Senate Law.

During the 1989 elections, some problems with campaign financing arose. For example, the communist coalition used - as it had in all previous elections - state or local budget monies and funds of state enterprises to finance its campaign. On the other hand, Solidarity used foreign contributions, which were not prohibited by law.

The 1990 Presidential Law drew on the experiences of the 1989 parliamentary and the 1990 local government elections and regulated more issues connected with campaign financing. It repeated the provisions of previous laws and added more. Out of 91 articles of the Presidential Law, six articles, i.e., articles 83-88 regulated campaign financing and they were more specific than the 1989 *Sejm* Law.

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[16] The Law of September 27, 1990 on Amendment to the Constitution of the Republic of Poland, Dz.U. No. 67, item 397 (1990).

[17] The Constitution, art. 32, as amended stated: "The President is elected by the Nation."

[18] Resolution of the Speaker of the House of the Republic of Poland of October 2, 1990 on Election of the President of the Republic of Poland, Dz.U. No. 68, item 399 (1990). *See also*, A. Kubiak, K. Leski, & P. Lewinski, "The Scoop On the Candidates," Gazeta Int'l, Nov. 29, 1990, at 4, col. 1-4, at 5, col. 1-2.

[19] Pursuant to art. 68 of the Presidential Law. *See also*, Election Results, Gazeta Int'l, Dec. 6, 1990, at 1, col. 2.

[20] S. Engelberg, "Walesa Walks Fine Line," N.Y. Times Int'l, Feb. 24, 1991; "Walesa Urges 'Instant' Elections in Poland," N.Y. Times, Mar. 8, 1991, at A2, col. 2-4. The authors mentioned that new parliamentary elections in Poland might take place on May 26, 1991.

However, even in this, most recent, electoral law the regulation of financing of elections and electoral campaigns was far from being adequate and clear. The Presidential Law did not contain any definitions to distinguish between the financing of electoral campaigns of individual candidates or parties (for which government money could not be used) and the financing of other expenses connected with elections, which were paid from governmental funds. The law did not contain any list of items, activities, etc., for which government funds could be used, and it had many other ambiguities which required clarification. Therefore, the following analysis will attempt to organize and explain various laws governing national elections, using methods of interpretation generally accepted in Poland.

In Poland--as in most modern countries--national and local elections were financed from State or local budgets.[21] Article 96, paragraph 1, of the *Sejm* Law--which also applied to the Senate--and article 84, paragraph 1, of the Presidential Law provided that expenses connected with elections were financed from the State budget. However, "expenses connected with the nomination of candidates and their electoral campaign" were specifically excluded.[22]

Furthermore, article 86 of the Presidential Law particularly forbade the use of certain funds for electoral campaigns. These were: 1. State budget monies; 2. monies from budgets of local government and other state organizational units; 3. monies from budgets of *gminas*, self-government *sejmikis* (dietines), and communal associations; 4. funds of state-owned economic entities and other legal entities in which the State Treasury was a majority shareholder. This article interpreted together with articles 83 and 84 of the Presidential Law should be read as prohibiting the use of these funds for financing expenses connected with the nomination and electoral campaign of individual candidates. Other expenses connected with elections were financed from the state or local budgets according to article 83 of the Presidential Law. However, the law did not distinguish between direct and indirect funding.

B. Direct Funding

Article 96 of the *Sejm* Law--which applied to the Senate--and articles 84 and 86 of the Presidential Law prohibited providing governmental funds to political candidates to finance their nomination or their electoral campaign. The Law on Political Parties did not expressly prohibit political parties from receiving public funds. However, in article 6, paragraph 1, it stated that assets of a political party used for accomplishment of its goals could derive from membership dues, donations, bequests, legacies, income from its property and economic activity, and from public contributions. Since government funding was not listed among permitted kinds of sources, one may argue that a political party could not receive governmental funding. Furthermore, the Law on Political Parties stated that rules for providing public resources to political parties for their

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[21] *See*, e.g., *Sprawozdania finansowe zarejestrowanych kandydatow na Prezydenta RP. Koszty kampanii wyborczej.* Komunikat Panstwowej Komisji Wyborczej z dnia 11 lutego 1991 r. (Financial Reports of Registered Presidential Candidates. Costs of Electoral Campaign. The Announcement of the State Electoral Commission of February 11, 1991), Rzeczpospolita, Mar.., 1991, at...., col..... hereinafter SEC Announcement.

[22] The *Sejm* Law, art. 96, para. 1; The Presidential Law, art 84, paras. 1 and 2.

electoral campaign were governed by electoral laws. Therefore, it was clear that a political party could not receive any governmental funds for the purpose of nomination of candidates and their electoral campaign.[23]

C. Indirect Funding

1. Electoral Expenses

As previously stated, any expenses which were not connected with the nomination of a particular candidate or his/her electoral campaign were provided from State or local budgets. This included providing premises and technical services for the work of the electoral commission and for voting, printing and distributing voters information, free use of government mass media, etc. Article 96, paragraph 2 of the Sejm Law and article 90 of the Presidential Law provided that all papers, letters, applications, judicial, and administrative procedings concerning elections were exempt from fees.

2. Access to Mass Media

Access to the mass media was particularly important in the 1989 Sejm and Senate elections because the communist government had an almost complete monopoly of mass media, which included an absolute monopoly of radio and television. Therefore, the candidates could not purchase any radio or television time. To remedy this situation, the Sejm Law provided that candidates for Deputies and Senators had access to state mass media on principles defined in the Round Table Documents.[24] The Round Table Agreements stated: "All candidates for Deputies and Senators will conduct their electoral campaign so as to avail themselves of the equal rights belonging to them, meaning rights of freedom of speech, of publication, of assembly, and of access to the State-run media."

Pursuant to these Agreements, Solidarity was allowed to start a mass circulation daily paper, *Gazeta Wyborcza* (Electoral Gazette). Its first issue appeared on May 8, 1989.[25] The government coalition received 23 minutes a day on state television. Solidarity was allowed only 7 minutes a day and it also received a very limited share of radio time.[26]

During the Presidential elections the situation was entirely different. Article 83, paragraph 1, of the Presidential Law provided that all candidates had free and equal access to the state radio

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[23] The Parties Law, art. 6, para. 5. Such funding was allowed e.g., in recent elections in Hungary where a political party could receive certain amount of money from the state for its electoral campaign. This provision was necessary to encourage formation of parties and to permit the opposition--which was much less organized than in Poland--to take part in electoral campaign.

[24] The *Sejm* Law, art. 97, which also applies to Senate elections.

[25] Matyja, *supra* note 2, at 8.

[26] Pelczynski, *supra* note 1, at 349.

and television. Particular rules according to which registered candidates and their representatives could broadcast electoral programs and declarations were set by the State Electoral Commission in cooperation with the Chairman of the Committee for Radio and Television.[27]

3. Tax Exemptions

Polish tax law was not as sophisticated as that of the United States, and it did not contain many tax incentives such as tax credits or tax exemptions. Neither the *Sejm* and Senate Law nor the Presidential Law provided any incentives to contributors, such as tax credits or tax exemptions. The only tax exemption which could be applicable here was the tax exemption for a political party's income from economic activity to the extent to which it was allocated for the purposes specified in the party's statute.[28] This provision could be basis for a tax exemption for the campaign financing expenditures during Presidential elections.[29]

III. Non-Governmental Funding by Residents

The 1989 *Sejm* Law did not contain any restrictions on non-governmental sources of campaign financing. Solidarity posters, stickers, and leaflets and other items or activities connected with the electoral campaign were financed by various individual contributions.

The first restrictions on political contributions were introduced in the Parties Law in July 1990. The Law stated that assets of a political party may derive from membership dues, donations, bequests, legacies, income from its property and economic activity as well as from public contributions.[30]

"Legal entities and individuals may donate campaign funds for registered candidates." There were no limitations on the amount contributed by individuals or by legal entities. The only limitation related to the source of income and provided that funds donated by legal entities could

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[27] Issued pursuant to the Presidential Law, art. 83, para. 2. According to art. 83, para. 3, any information, communiques, appeals, and slogans published or disseminated on the radio or television at the expense of the candidate or his sponsoring organization had to specify the name of the sponsor and comply with the requirements of the Press Law, which was much more restrictive than U.S. first amendment as interpreted by the U.S. Supreme Court. Art. 81 of the Presidential Law provided that any false or incorrect information relating to elections and electoral campaign had to be rectified within 48 hours.

[28] The Parties Law, art. 6, para. 7.

[29] Parties Law was enacted after *Sejm* and Senate 1989 elections.

[30] The Parties Law, art. 6. The Law also prohibited the use of any material or financial support of foreign citizens as construed by the foreign exchange law and of legal entities with exclusive participation of foreign entities.

be derived only from profits.[31] Similarly, the law did not provide any limitations on campaign expenditures.

The Presidential Law provided that the candidate's campaign manager could organize public collections of funds for financing the electoral campaign and this activity did not require any permit.[32] The law sanctioned this practice which had developed during the previous 1989 and 1990 elections. In a way similar to the Parties Law, the Presidential Law also provided that the financing of electoral campaigns was a matter of a public record.[33]

IV. Regulation of Foreign Campaign Contributions

The 1989 *Sejm* Law, did not anticipate any problems with foreign contributions and did not prohibit them. Solidarity and its supporters did not have any funds but, with the help of Poles and people of Polish descent living abroad, they were able to mobilize various foreign citizens, organizations, and institutions to contribute substantial amounts of money to finance the electoral campaign of the opposition. The use of foreign contributions in the Solidarity electoral campaign was not against the law, but it was criticized by the communist media as foreign interference in Polish elections.

The first prohibition against the use of foreign contributions was introduced in the Parties Law in July 1990. In article 6.3, it stated that political parties may not benefit from any material or financial support by foreign citizens, as defined in the foreign exchange law, or from legal entities with the exclusive participation of foreign citizens. This complete ban was strongly criticized because it cut off political parties from any foreign aid including monetary and in-kind aid, such as supplies, instruments, computers, or training. It was a particularly severe blow against the formation and activities of new political parties which had no resources for financing their activity. Their representatives argued that in the present state of the Polish economy, neither membership dues nor the newly-created private sector could supply enough funds to encourage the organization

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[31] Presidential Law, art. 85.

[32] *Id.* art. 87.

[33] The Presidential Law, art. 88 and the Parties Law, art. 6, para. 8. The Presidential Law also provided that within two months after the Election Day, campaign managers were obliged to submit to the Chairman of the State Electoral Commission financial reports on campaign expenses and funding sources [art. 88, para. 3].

and activities of new parties.[34] During the debate on the Bill on Political Parties, the Senate Commission on Legality and Human Rights proposed a ban only on contributions by foreign governments and international organizations suspected of terrorist activities.[35]

Article 86 of the Presidential Law prohibited the use of foreign sources, which meant monetary and in-kind aid and included contributions by foreign individuals as well as by foreign companies or organizations. However, unlike the Parties law, the Presidential Law did not even attempt to define the meaning of *foreign sources*. Therefore, it was not clear whether monetary or material aid transferred from abroad to a Polish citizen would lose its foreign source character or not.

V. Auditing Procedures for Campaign Financing

As previously stated, the *Sejm* Law, article 96, imposed only one restriction on campaign financing which prohibited the use of State budget monies to cover expenses connected with nomination of individual candidates and their electoral campaign. The law did not provide any special auditing procedures for campaign financing, and monitoring the compliance with the law in this area was done together with monitoring the adherence to other provisions of electoral laws.

Aside from these provisions, article 88 of the Presidential Law introduced a kind of monitoring procedure for campaign financing.[36] It stipulated that the financing of electoral campaigns was a matter of public record. The Minister of Finance was obligated to make public, within three months after Election Day, the report on expenditures funded from the State Budget. Presidential candidates' campaign managers were obliged to submit to the Chairman of the State Electoral Commission, within two months after Election Day, financial reports on expenses associated with their electoral campaign and on their funding sources. The reports of the Minister of Finance and of the Presidential candidates were available for public inspection.

The law required only that the Minister of Finance made his report public and that campaign managers submit their reports to the State Electoral Commission within the prescribed time. As the President of the State Electoral Commission, Andrzej Zoll, pointed out, the Commission had no power to verify or comment on submitted reports.[37]

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[34] Legislacyjny niewypal, czyli ustawa o partiach politycznych (Legislative Failure or the Law on Political Parties), *Rzeczpospolita*, Sept. 19, 1990. It is a conversation with Jan Olszewski, expert of the Senate Commission on Legality and Human Rights.

[35] *Id.*

[36] It was introduced for the first time in the Gmina Law, *supra* note 20.

[37] K. Chrupkowa, "Ostatnie slowo PKW. Loszt prezydenckiego fotela" (The Last Word of the State Electoral Commission. The Cost of the Presidential Chair.) *Rzeczpospolita*, March ...1991 ...., hereinafter Chrupkowa; SEC Announcement, *supra*, note 21.

Although the Law did not contain such a requirement, the State Electoral Commission asked for a written statement, enclosed with the reports, that a campaign was not financed from sources prohibited by article 88, including foreign sources. Six campaign managers submitted the reports. Five of them included the statement that their campaign was not financed from prohibited sources. Only Leszek Moczulski's campaign manager did not include such statement but sent a complete set of bills. The State Electoral Commission accepted the reports since the law did not give it any rights to verify or comment on submitted reports.[38] According to these reports, the most expensive was Mazowiecki's campaign with 5,669,896,103 zl, and Walesa's campaign with 369,433,500 zl.[39]

VI. Penalties for Irregularities

The electoral laws did not provide specific penalties for irregularities committed in connection with campaign financing. Therefore, the only procedure which could be applied here was the general procedure for contesting elections, as prescribed by articles 87-92 of the *Sejm* Law and articles 72-76 of the Presidential Law. Both laws provided grounds and procedures for contesting the results of elections.

The elections could be contested by filing a protest based on two grounds: either violation of the electoral laws, or committing a crime against elections, but only if said violation or crime could affect the outcome of the elections.[40] The contestant had a heavy burden of proof: he had to prove not only the violation of campaign financing provisions or a crime against elections, but also that this violation or crime affected the outcome of the elections. The *Sejm* Law did not contain any prohibitions relating to the campaign financing which could be breached by the candidates for Deputies or Senators. Presidential candidates could be responsible for breaching prohibitions contained in article 85, paragraphs 2 and 3, and in article 86.

Any protest had to be filed with the Supreme Court.[41] The Supreme Court had to issue an opinion on the protest and to submit it, together with the case file, to the *Sejm*,[42] or to the Speaker of the *Sejm*.[43] The validity of the Deputy's election was decided by *Sejm*, after considering

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[38] *Id.*

[39] Chrupkowa, *supra* note 37.

[40] The *Sejm* Law, art. 88--which also applies to Senate elections--and of the Presidential Law, art. 72.

[41] Pursuant to the *Sejm* Law, art. 89 and the Presidential Law, art. 73.

[42] The *Sejm* Law, art. 91, para. 3.

[43] The Presidential Law, art. 75, para 3.

the objections contained in the protest and the opinion of the Supreme Court[44]. The Senate Law provided that the validity of the Senatorial elections was confirmed by the Senate on the basis of the electoral report prepared by the State Electoral Commission.

The validity of the Presidential elections was decided by the National Assembly, on the basis of the election report submitted by the State Electoral Commission, and upon examining the accusations contained in the protest and the appropriate opinion of the Supreme Court.[45] So far, there have been no cases of protests concerning violations of campaign financing provisions.

VII. Conclusion

As the electoral process becomes more free and democratic, political parties will strengthen, and various interest groups will develop that will try to influence the electoral process. There will be more need to regulate campaign financing procedures. The appearance of a completely unknown presidential candidate, Tyminski, in the 1990 Presidential elections was an example of such a need. He showed up quite unexpectedly, was unknown in Poland, and became one of the two top candidates. His candidacy posed some serious questions as to what interest groups, if any, stood behind him and financed his lavish presidential campaign.

Poland's recent experience with elections and political campaigns has shown shortcomings in the regulation of campaign financing. Imperfections in the electoral laws include among others:

- The lack of definition of what constituted an electoral campaign of individual candidates or parties and could not, therefore, be funded from the State or local budget, as opposed to other expenses connected with elections, which could be covered from the State or local budgets.

- The lack of regulation of the activities of civic committees and inadequacies in the Political Parties Law.

- The lack of auditing procedures for campaign financing.

- The lack of penalties for irregularities in campaign financing.

There is discontent with the present legislature because it was not elected in completely free elections. During the 1989 elections, only 35 percent of the *Sejm* seats were freely contested while 65 percent of the seats were reserved for the communist coalition. Therefore, new elections to both houses are expected soon.[46] Since the 1989 *Sejm* and Senate Laws governed only the 1989

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[44] The *Sejm* Law, art. 92, para. 1.

[45] The Presidential Law, art. 76, para. 1.

[46] S. Engelberg, *Walesa Walks Fine Line*, N.Y. Times Int'l, Feb. 24, 1991; *Walesa Urges "Instant" Elections in Poland*, N.Y. Times, Mar. 8, 1991, at A2, col. 2-4. The authors mentioned that new parliamentary elections in Poland might take place on May 26, 1991.

elections,[47] a new law has to be adopted.[48] One may hope that the new law will provide more adequate and complete regulation of campaign financing.

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[47] *Supra* note 4.

[48] *A Thankless Task: Walesa Must Persuade Poles to Stay Course on Economic Reform*, Soviet/E.Eur.Rep., Dec. 15, 1990, at 1,3; A. Goszczynski, *The Beginning of the End*, The Warsaw Voice, Feb. 10, 1991, at 4, col. 2-4.

THE SOVIET UNION

I. Introduction

A. The New Election Law

With the signing of the new election law by then-Chairman of the Supreme Soviet Gorbachev on December 20, 1989[1], the electoral process in the Soviet Union became significantly more democratic. Most notably, the new law encourages--though does not require - multiple candidates for each seat, through a complex, multi-stage nomination process. Even unopposed candidates can be rejected if a majority of voters cross their names off the ballot. Voting is to be by secret ballot.

The law on the election of deputies to the Congress of People's Deputies provides for the election of two-thirds (1500) of the deputies from regional electoral districts. The remaining one-third (750) of the deputies are to be elected by all-union organizations. These deputies are to be chosen by secret ballot at congresses, conferences, or plenums of the appropriate organizations.

B. The 1989 Elections

In the first election under the new system, on March 26, 1989, voter participation was a very high 89.8 percent.[2] This was the freest election in Soviet history. Many high-ranking party officials were defeated. Pro-independence groups won majorities in the Baltic States (Estonia, Latvia, and Lithuania) and promptly proclaimed their determination to leave the Soviet Union. The elections gave a boost to the establishment of a multi-party system and marked a shift of power from the Communist Party and government bureaucracies to elected bodies.

II. Campaign Financing

Campaign financing rules are very restrictive. Under Article 100 of the Election Law," ... the expenditure associated with the preparation and holding of elections of people's deputies is met by the corresponding electoral commission from a single fund created at the state's expense and from voluntary contributions by enterprises, social organizations, and citizens." The government provides whatever facilities and funds are necessary for campaign and election meetings and for candidates' travel. It even prints candidates' campaign literature and posters. The law prohibits

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[1] Gazette of the Supreme Soviet of the USSR, December 20, 1989, No. 29, Item 540.

[2] *Foreign Broadcast Information Service (FBIS) Daily Report: Soviet Union* (March 1989).

candidates from spending their own money or collecting and spending contributions from supporters.[3]

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[3] *The New Soviet Legislature* CRS Report 90-478F, September 20, 1990.

THE EUROPEAN COMMUNITY

The institutional foundation for the present European Community was established by the Treaty of Paris, signed on April 18, 1951, by which six Western European countries--Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, and the Netherlands--established the European Coal and Steel Community. The Treaties of Rome, signed in March 1957, set up the European Economic Community and extended the common market to all sectors of the economies of the six member nations. The Community was enlarged by the addition of Denmark, the Republic of Ireland, and the United Kingdom in 1973, of Greece in 1981, and of Spain and Portugal in 1986.

In July 1987 the Single European Act, which was signed in February 1986, entered into force. This Act amends and complements the Treaties of Paris and Rome and brings about significant changes in the supra-national institutions of the European Community. These major constitutional changes in the working of the Community increase the importance of the European Parliament.[1] It was given more influence over the Community's decision-making process aimed at completing the internal market. With the increase in the power of Parliament, the significance of the elections has increased accordingly.

Members of the European Parliament are elected by universal suffrage for five-year terms by the citizens of the Community's twelve member states. The Parliament is composed of 518 members who form political rather than national groups. There are 81 members each from the four most populous countries (Germany, France, Italy and the United Kingdom); 60 from Spain; 25 from the Netherlands; 24 from Belgium, Greece and Portugal; 16 from Denmark; 15 from Ireland; and 6 from Luxembourg. Direct elections to the Parliament took place in 1979, 1984 and 1989.

Article 138 of the EEC Treaty stipulates that the European Parliament shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all member States and that the Council shall draw up the appropriate provisions, which will be recommended for adoption by the Member States in accordance with their respective constitutional requirements. On 20 September 1976, the Council adopted the Act concerning the election of the representatives of the European Parliament by universal suffrage. Article 7 of this Act calls for the Parliament to draw up a proposal for a universal electoral procedure. Several proposals for a uniform electoral procedure have been debated by the European Parliament, but none have been adopted. Each country has continued to use its own electoral system and national procedures. Eleven countries use systems involving a considerable degree of proportional representation, with only the United Kingdom (except Northern Ireland) using single ballot majority voting by constituency.

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[1] D. Butler and B. Sarlvik, eds., 8 *Electoral Studies*, 205, (December 1989).

Campaign Financing

In 1979, the year of the first direct elections for the European Parliament, the Parliament made money from its own annual budget available to prepare an information campaign for the different political groups. For the 1984 elections, the money provided by Parliament was divided into two categories. The first category was designed to meet election expenses of the parties and their candidates. The second category was used to pay the costs of the pre-election information campaign to educate the voters about European issues and institutions.[2] The money was only payable to those parties already represented in Parliament. It was left up to the different political groupings represented in Parliament to determine how the money was to be distributed to their constituent parties at the national level.

This campaign financing method proved to be controversial and was challenged in the European Court of Justice in the case brought against Parliament by Les Verts, the French ecologist party in 1984-1985. The party's claim was that those parties already represented in Parliament received more money. As a result, they had a considerable advantage over political groupings which had no representatives in the European Parliament in 1979. The European Court held the financial subsidies to be void,[3] and campaign subsidies remained within the competence of the member states alone. Not until a uniform electoral procedure has been adopted can campaign money be supplied to the individual national political parties.

However, the European Parliament has two items in its general budget which can be used for political activities. The money from items 3705-3706 goes to the Parliament's different political groups and non-attached Members of Parliament. They can spend these funds as they will, including campaign expenses.[4] The money from item 3708 (European Information Campaign) goes to the different political groups in the European Parliament, and the national political parties can make a proposal in which they ask for a certain allocation of the money. The Bureau of the European Parliament will establish the conditions governing the expenditure.

Until a uniform electoral procedure, which may include direct funding of political campaigns, has been established, financing the campaigns for elections to the European Parliament will continue to be governed by the laws of the individual countries. In 1988, the President of the Commission stated that in ten years 80 percent of economic and perhaps also of fiscal and social legislation would be put forward at the Community level. To fulfil its obligations to the electors,

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[2] K. Ewing, *The Funding of Political Parties in Britain*, 122 (New York: Cambridge University Press, 1987).

[3] ECR 1339 (1986), 2 CMLR 343 (1987), ECR 1017 (1988), 2 CMLR 880 (1989).

[4] Professor E.L.M Volker, (Europa Institut, University of Amsterdam) in a letter of 27 March 1991.

the European Parliament must by then ensure that it is elected by a fully-representative, equitable and uniform electoral procedure.[5]

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[5] 9,1 *Electoral Studies* 44 (March 1990).

CAMPAIGN FINANCING
A selective and partially annotated bibliography

I. Comparative Works

Alexander, Herbert E. **Comparative political finance in the 1980s.** Cambridge; New York: Cambridge University Press, 1989. xii, 274 p. JF2112.c28c64 1989

The most important current comparative analysis on campaign financing written in English. Comparative essays on private and public subsidies are complemented with in-depth descriptions of political finance in: Great Britain, Canada, Australia, the United States, Israel, The Federal Republic of Germany, Spain, Italy, and the Netherlands.

Castillo Vera, Pilar del. **La financiación de partidos y candidatos en las democracias occidentales.** Madrid: Centro de Investigaciones Sociológicas: Siglo Veintiuno de España Editores, 1985. xiii, 306 p. JF2112.C28 C37 1985

Work divided into two parts: The first an international survey of campaign financing; the second dealing exclusively with Spain.

A Comparative Survey of Election Finance Legislation, 1988. Commission on Election Contributions and Expenses. Toronto, Ontario: The Commission, 1988. vii, 363p. In process

Synopsis and survey of election finace legislation in Canada, the United States, Australia, and New Zealand.

Government financing of national elections, political parties, and campaign spending of various foreign countries. By members of the staff. Washington, D.C.: Law Library, Library of Congress, 1980. Parts I-II. JF1085.U55 1980

Series of reports, originally developed in response to congressional request. Includes also the issue of radio and television broadcast time for political campaigns. Part I covers Austria, Canada, the Federal Republic of Germany, Great Britain, Israel, Italy, and Mexico; Part II: France and the Scandinavian countries.

Heidenheimer, Arnold J. **Comparative political finance: the financing of party organizations and election campaigns.** Lexington, Mass.: Heath, 1970. xii, 195 p. JF2112.C28 C65

Collection of essays describing developments in various nations in the 1960's. The relationship between political finance and the role of parties is analyzed with a focus on a few selected countries within a region, as examples of different trends: The Federal Republic of Germany, Great Britain, the Scandinavian countries, United States and Canada, the Philippines-Malaysia and some Latin American countries. Bibliography is useful but now dated.

Heidenheimer, Arnold J. **Political corruption: readings in comparative analysis.** New York: Holt Rinehart and Winston, 1970. ix, 582 p. JF1525.E8 H42

Chapter 3, "The analysis of electoral and legislative corruption," provides historical perspectives from France, England and Germany, as well as contemporary practice in the United States and in selected developing nations.

Heidenheimer, Arnold J. and Frank C. Langdon. **Business associations and the financing of political parties: a comparative study of the evolution of practices in Germany, Norway and Japan.** The Hague: Martinus Nijhoff, 1968. xxiii, 249 p. HC286.H4

First attempt at a cross-national analysis of organized business as suppliers of funds to political parties in three significantly different nations.

Kraehe, Rainer. **Le financement des partis politiques; contribution a l'étude du statut constitutionnel des partis politiques.** Paris: Presses universitaires de France, 1973. 124 p. JF2112.C28 K73 1973

Scholarly treatise providing an international survey of the financing of political parties through private as well as public funds from the point of view of the French experience.

Landfried, Christine. **Parteifinanzen und politische Macht: eine vergleichende Studie zur Bundesrepublik Deutschland, zu Italien und den USA.** Baden-Baden: Nomos, 1990. 355 p. JN 3971.A979 L34 1990

Comparative study of party finances and political power in Germany, Italy and the United States.

Pollock, James Kerr. **Money and politics abroad.** Freeport, N.Y.: Books for Libraries Press, 1972. 328, xv p. JF2112.C28 P66 1972

Reprint of a 1932 classic work dealing with voters and political influence on government policies in Great Britain, Germany, and France.

Weigelt, Kurt. **Staatliche Parteienfinanzierung: zu den Möglichkeiten einer staatlichen Parteienfinanzierung in der Schweiz unter vergleichender Berücksichtigung der Gesetzgebung in Frankreich, der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika.** Grusch: Ruegger, 1988. 235 p. KKW2488.W45 1988

Proposed campaign legislation in Switzerland with comparisons taken from France, West Germany, and the United States.

Wicha, Barbara. **Parteienfinanzierung aus öffentlichen Mitteln: ihre Voraussetzungen und ihre Probleme.** Wien: Österreichische Gesellschaft für Politik, 1975. 93 p. JF2112.C28 W5

Brief comparative analysis of the role of the parties in the political process and their legal and financial basis. Focus is on the public funding of parties in Austria in comparison with examples taken from the United States and Canada, as well as from several Latin American and European countries.

II. Works Dealing Exclusively With One Jurisdiction *

Akiyama, Yoichiro. **Senkyo seiji katsudoho** (Election and political activities law). Tokyo: Gyosei, 1984. xxi, 432 p. LAW JAPAN A1642 1982

Arnim, Hans-Herbert von. **Parteienfinanzierung, eine verfassungsrechtliche Untersuchung.** Wiesbaden: Karl-Brauer-Institut des Bundes der Steuerzahler, 1982. 152 p. KK5299.A75 1982

Boyer, J. Patrick. **Money and message: the law governing election financing, advertising, broadcasting, and campaigning in Canada.** Toronto; Boston: Butterworths, 1983. xi, 625 p. KE4646.B69 1983

Campana, André. **L'argent secret.** Paris: Arthaud, 1976. 188 p. JN2959.C27

Cossutta, Armando. **Il finanziamento pubblico dei partiti.** Roma: Editori riuniti, 1974. 228 p. JN5651.C65

De Luca, Renata. **La nuova normativa del finanziamento dei partiti.** Padova: CEDAM, 1983. 78 p. KKH2488.D4 1983

Election funding and financial disclosure handbook. Australian Electoral Commission. Canberra: Australian Government Publishing Service, 1990. 6v. In process

Election funding and financial disclosure: report on the operation of part XX of the Commonwealth Electoral Act, 1918 in relation to the elections held on 11 July 1987. Australian Electoral Commission. Canberra: Australian Government Publishing Service, 1988. ix, 53p. In process

* For further information, consult the notes to the individual chapters.

Ewing, Keith D. **The funding of political parties in Britain.** Cambridge; New York: Cambridge University Press, 1987. xi, 264 p. JN1039.E95 1987

Gidlund, Gullan. **Partistöd** (Party Subsidy). Lund: CWK Gleerup, 1983. 367 p. JN7995.A1 G55 1983

Hansard Society for Parliamentary Government. **Paying for politics: the report of the Commission upon the Financing.** 1981. Not in LC Collection

Jakob, Wolfgang and Roland Jupiter. **Steuerfragen der mittelbaren Parteienfinanzierung über Organisationen: Verfassungsrecht, Betriebsausgabenabzug, Vertrauensschutz.** Stuttgart: R.Boorberg, 1986. 304 p. KK7229.J35 1986

Johnston, Ronald J. **Money and votes: constituency campaign spending and election results.** London; New York: Croom Helm, 1987. xiv, 218 p. JN1039.J63 1987

Matsuura, Masataka and K. Otake. **Seiji shikin** (Political funds). Tokyo: Daiichi Hoki, 1983. xiii, 250 p. LAW JAPAN A 1611 1983

Mühleisen, Hans-Otto, ed. **Das Geld der Parteien: Parteienfinanzierung zwischen staatspolitischer Notwendigkeit und Kriminalität.** München: Schnell & Steiner, 1986. 172 p. JN3971.A95 G43 1986

Pankiewicz, Adalberto Wojtek. **Finanziamento pubblico dei partiti.** Milano: Giuffre, 1981. viii, 110 p. JN5651.P356

Papadopoulos, Georgios V. **He chrematodotese ton politikon kommaton hos provlema tes demokratias** (Financing of political parties as a problem in democracy). Thessalonike: Ektodoseis Maiandros, 1989. 280 p. In process

Pinto-Duschinsky, Michael. **British political finance, 1830-1980.** Washington: American Enterprise Institute for Public Policy Research, 1981. xviii, 339 p. JN1039.P56

Titzck, Karl-Reinhard. **Verfassungsfragen der Wahlkampfkostenerstattung.** Baden-Baden: Nomos, 1990. xiv, 185 p. KK5299.T57 1990

Wewer, Gottrik. **Parteienfinanzierung und politischer Wettbewerb; Rechtsnormen, Realanalysen, Reformvorschläge.** Opladen: Westdeutscher Verlag, 1990. 490 p.
JN3971.A979 P34 1990

Who pays the piper calls the tune: minimising the risks of funding political campaigns: inquiry into the conduct of the 1987 federal election and 1988 referendums. Parliament of the Commonwealth of Australia. Canberra: Australian Government Publishing service, 1989. xv, 168 p. J905.L3 1989, no. 171

Yamamoto, Takeshi. **Shokai seiji shikin kiseiho** (Commentary on the political funds control law). Tokyo, Gyosei, 1976. xxv, 452p. LAW Japan T 2210 1976

III. Background: Parties and Political Systems

Alexander, Robert J., ed. **Political parties of the Americas: Canada, Latin America, and the West Indies.** Westport, Conn.: Greenwood Press, 1982. 2 v. (The Greenwood historical encyclopedia of the world's political parties). JL195.P64 1082

Two volume reference set covering political parties in the Western hemisphere, excluding the United States. Arranged alphabetically by country, the work provides a brief introduction to each country and a short bibliography for further reading.

Daalder, Hans, ed. **Party systems in Denmark, Austria, Switzerland, The Netherlands, and Belgium.** New York: St. Martin's Press, 1987. xiii, 372 p. JN94.A979 P39 1987

In-depth study of the developments of the party systems of five smaller European democracies that tend to be inadequately covered in comparative analyses. Each contribution followed by generous bibliographies.

Daalder, Hans and Peter Mair, eds. **Western European party systems: continuity and change.** Beverly Hills, Calif.: SAGE Publications, 1983. iv, 465 p. JN94.A979 W46 1983

Collection of comparative studies arguing that the realities of the European political experience can neither be described in generalizations nor be predicted.

Day, Alan J. and Henry W. Degenhardt. **Political parties of the world.** 2nd ed. Detroit: Gale Research Co., 1984. x, 602 p. JF2051.D39 1984

Concise factual data on active political parties in all countries of the world from Afghanistan to Zimbabwe, as well as international groupings, e.g., the European Communities. Provides under each country in alphabetical order the address, leadership, history, orientation, structure and membership of each party.

Delury, George E., ed. **World encyclopedia of political systems & parties.** 2nd ed. New York: Facts on File, 1987. 2 v. JF2011.W67 1987

Reference work covering the main elements of the political systems of most sovereign nations and independent territories of the world. Describes the institutions of government, the judiciary, etc., with necessary historical background. Separate section deals with the electoral system in all its aspects, including financing where relevant.

Fukui, Haruhiro and Colin A. Hughes. **Political parties of Asia and the Pacific.** Westport, Conn.: Greenwood Press, 1985. 2 v. (The Greenwood historical encyclopedia of the world's political parties). JQ39.A45 P64 1985

Reference work in two volumes which attempts to classify the political parties in an area of the world which generally has resisted the introduction of Western-style political parties. Arranged alphabetically by country and by party.

Merkl, Peter H. **Western European party systems: trends and prospects.** New York: Free Press, 1980. xi, 676 p. JN94.A979 W47 1980

Overview of the role of the parties in the political system, their organizational features and political cultures, the partisan cleavages in the electorate and the composition of the party membership. Arranged according to major countries (Federal Republic of Germany, Great Britain, France, Italy) or smaller democracies (The Netherlands, Sweden, Norway and Denmark, Finland, Ireland, Austria, Spain, and Portugal). Concluding chapters deal with comparative topics and future perspectives.

Pelinka, Anton. **Social democratic parties in Europe.** New York: Praeger, 1983. xvi, 190 p. HX238.5.P4413 1983

A study of the concept, history, and development of social democratic and socialist parties in Europe, where they have gained a solid footing as a dominant type of party. Also includes information about fundraising and media use.

IV. Background: Elections

Blumler, Jay G., ed. **Communicating to voters: television in the first European Parliamentary elections.** London; Beverly Hills: SAGE Publications, 1983. iv, 389 p. JN36.C65 1983

Collective study on the nature and impact of television in the 1979 Direct Elections to the European Parliament. An attempt to systematically analyze similarities and differences in matters such as television network organization, use of campaign material, awareness of issues, degrees of Europeanness. Responses are compared and serve as basis for conclusions.

Bogdanor, Vernon and David Butler, eds. **Democracy and elections: electoral systems and their political consequences**. Cambridge; New York: Cambridge University Press, 1983. ix, 267 p. JN94.A95 D45 1983

Collection of essays on the electoral systems of the European Community countries and Japan. The authors show that the very same systems yield very different consequences when introduced into societies with contrasting historical traditions.

Butler, David, et al. **Democracy at the polls: a comparative study of competitive national elections.** Washington; American Enterprise Institute for Public Policy Research, 1981. 367 p. JF1001.D45

Comparative cross-national analysis of the conduct and impact of national general elections in twenty-eight democracies. Campaign finance and party subsidies are covered, as is the role of mass media in the election process.

Herman, Valentine and Mark Hagger. **The legislation of direct elections to the European Parliament**. Farnborough, Eng.: Gower, 1980. ix, 320 p. JN36.L43

A country-by-country study of the historical background and process that led to the direct elections. Written under the auspices of the Anglo-Dutch Institute of Parliamentology and Parliametrics. Appendix contains results of the first direct election, June 1979.

Lodge, Juliet and Valentine Herman. **Direct elections to the European Parliament: a community perspective.** London: Macmillan, 1982. xiv, 322 p. JN36.L62 1982

The first part of the book examines how the Commission and the European Parliament went about launching special information programs before the direct elections; the second part deals with the role of the major transnational party organizations vis-à-vis direct elections. Concluding part assesses the use of radio and television specials and provides the results of the elections.

Maisel, Louis, ed. **Changing campaign techniques: elections and values in contemporary democracies**. Beverly Hills, Calif.: Sage Publications, 1976. 274 p. JF1001.C47

Essays examining the effects of changing campaign techniques due to technological advances, the role of private as well as public subsidies, and a comment on the consequences for democratic elections.

Pridham, Geoffrey and Pippa Pridham. **Transnational party co-operation and European integration; the process towards direct elections.** London; Boston; Allen & Unwin, 1981. xii, 307 p. JN93.A979 P745 1981

Work giving the historical background to the European political parties, transnational cooperation in the process of the direct elections to the European Parliament and possible evolution towards a community party system.

Reif, Karlheinz, ed. **Ten European elections: campaign and results of the 1979/81 first direct elections to the European Parliament.** Brookfield, Vt.: Gower, 1985. vii, 223 p.
JN36.T46 1985

In-depth analysis of the historic early elections to the European Parliament, by Member State and in a comparative perspective.

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